

A
COLLECTION
OF
STATUTES
CONNECTED WITH THE
GENERAL ADMINISTRATION OF THE LAW,
ARRANGED
ACCORDING TO
THE ORDER OF SUBJECTS,
WITH NOTES,

BY
WILLIAM DAVID IVANS, ESQ
VICE-CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER

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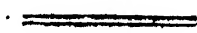
* The Subjects included in this Class are so intimately connected in themselves, and are so essentially blended in several of the Statutes, that I have found it most convenient to place them together. The Statutes relating to Outlawry, Real Actions, and Proceedings against Persons having Privilege of Parliament, are not included, and are comprised in several Classes relating particularly to those respective Subjects. As many Statutes equally affect Imprisonment under *Meane Process* and upon Execution, the whole Subject of Imprisonment under Civil Process is included in the present Class; although those Statutes which relate exclusively to Imprisonment under Execution would, in other Respects, be more regularly inserted in a subsequent Division.

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PART III.



PERSONAL PROPERTY

AND

CONTRACTS.



• PART III. CLASS I.

PATENTS, LITERARY PROPERTY, PROPERTY IN PRINTS, BUSTS, AND PATENTS OF MANUFACTURES.

No. 1.

21 James I. c. 3.—An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.

FORASMUCH as your most Excellent Majesty, in your Royal Judgment, and of your blessed Disposition to the Weal and Quiet of your Subjects, did in the Year of our Lord God One Thousand Six Hundred and Ten, publish in Print to the whole Realm, and to all Posterity, that all Grants and Monopolies, and of the Benefit of any Penal Laws, or of Power to dispence with the Law, or to compound for the Forfeiture, are contrary to your Majesty's Laws, which your Majesty's Declaration is truly consonant and agreeable to the ancient and fundamental Laws of this your Realm: And whereas your Majesty was further graciously pleased, expressly to command, that no Suitor should presume to move your Majesty for Matters of that Nature; yet nevertheless upon Misinformations, and untrue Pretences of public Good, many such Grants have been unduly obtained, and unlawfully put in Execution, to the great Grievance and Inconvenience of your Majesty's Subjects, contrary to the Laws of this your Realm, and contrary to your Majesty's most Royal and Blessed Intention, so published as aforesaid: For avoiding whereof, and preventing of the like in Time to come, may it please your Excellent Majesty, at the humble Suit of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That it may be declared and enacted; and be it declared and enacted by Authority of this present Parliament, That all Monopolies, and all Commissions, Grants, Licences, Charters, and Letters Patents heretofore made or granted, or hereafter to be made or granted, to any Person or Persons, Bodies Politic or Corporate whatsoever, of or for the sole buying, selling, making, working, or using of any Thing within this Realm, or the Dominion of *Wales*, or of any other Monopolies, or of Power, Liberty, or Faculty, to dispence with any others, or to give Licence or Toleration to do, use, or exercise any Thing against the Tenor or Purport of any Law or Statute; or to give or make any Warrant for any such Dispensation, Licence, or Toleration to be had or made; or to agree or compound with any others for any Penalty or Forfeitures limited by any Statute; or of any Grant

21 Jac. I. c. 3.
All Monopolies,
&c. shall be void.
Stile 214.
3 Inst. 181,
182, 183.
1 Haw. P. C.
p. 230 & seqent.

No. 1.

21 Jac. I. c. 3.

3 Mod. 131.

Monopolies, &c.
shall be tried by
the Common Laws
of this Realm.

All Persons dis-
abled to use Mo-
nopolies, &c.

The Party grieved
by the Ext of a
Monopoly, &c.
shall recover tre-
ble Damages and
double Costs.

He that delayeth
an Action ground-
ed upon this Sta-
tute incurs a Pen-
alty.

or Promise of the Benefit, Profit, or Commodity of any Forfeiture, Penalty, or Sum of Money, that is or shall be due by any Statute, before Judgment thereupon had; and all Proclamations, Inhibitions, Restraints, Warrants of Assistance, and all other Matters and Things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the the same or any of them; are altogether contrary to the Laws of this Realm, and so are and shall be utterly void and of none Effect, and in no wise to be put in Use or Execution.

II. And be it further declared and enacted by the Authority aforesaid, That all Monopolies, and all such Commissions, Grants, Licences, Charters, Letters Patents, Proclamations, Inhibitions, Restraints, Warrants of Assistance, and all other Matters and Things tending as aforesaid, and the Force and Validity of them, and of every of them, ought to be and shall be for ever hereafter examined, heard, tried, and determined, by and according to the Common Laws of this Realm, and not otherwise.

III. And be it further enacted by the Authority aforesaid, That all Person and Persons, Bodies Politic and Corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and incapable to have, use, exercise, or put in Use any Monopoly, or any such Commission, Grant, Licence, Charter, Letters Patents, Proclamation, Inhibition, Restraint, Warrant of Assistance, or other Matter or Thing tending as aforesaid, or any Liberty, Power, or Faculty, grounded or pretended to be grounded upon them, or any of them.

IV. And be it further enacted by the Authority aforesaid, That if any Person or Persons at any Time after the End of Forty Days next after the End of this present Session of Parliament, shall be hindered, grieved, disturbed, or disquieted, or his or their Goods or Chattels any way seized, attached, distrained, taken, carried away or detained, by Occasion or Pretext of any Monopoly, or of any such Commission, Grant, Licence, Power, Liberty, Faculty, Letters Patents, Proclamation, Inhibition, Restraint, Warrant of Assistance, or other Matter or Thing tending as aforesaid, and will sue to be relieved in or for any of the Premises; that then and in every such Case, the same Person and Persons shall and may have his and their Remedy for the same at the Common Law, by any Action or Actions to be grounded upon this Statute; the same Action and Actions to be heard and determined in the Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their Goods or Chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such Person and Persons which shall be so hindered, grieved, disturbed, or disquieted, or whose Goods or Chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover Three Times so much as the Damages which he or they sustained by Means or Occasion of being so hindered, grieved, disturbed, or disquieted, or by Means of having his or their Goods or Chattels seized, attached, distrained, taken, carried away, or detained, and double Costs; and in such Suits, or for the staying or delaying thereof, no Essoin, Protection, Wager of Law, Aid, Prayer, Privilege, Injunction, or Order of Restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than One Imparlance: And if any Person or Persons shall, after Notice given, that the Action depending is grounded upon this Statute, cause or procure any Action at the Common Law, grounded upon this Statute, to be stayed or delayed before Judgment, by colour or means of any Order, Warrant,

Power, or Authority, save only of the Court wherein such Action as aforesaid shall be brought and depending, or after Judgment had upon such Action, shall cause or procure the Execution of or upon any such Judgment to be stayed or delayed by colour or means of any Order, Warrant, Power, or Authority, save only by Writ of Error or Attaint; That then the said Person and Persons so offending shall incur and sustain the Pains, Penalties and Forfeitures, ordained and provided by the Statute of Provision and *Præmunire* made in the Sixteenth Year of the Reign of King RICHARD the Second.

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21 Jac. I. c. 3.

16 R. 2, c. 5.

V. Provided nevertheless, and be it declared and enacted, That any Declaration before mentioned shall not extend to any Letters Patents and Grants of Privilege for the Term of One and Twenty Years or under, heretofore made, of the sole Working or Making of any Manner of new Manufacture within this Realm, to the first and true Inventor or Inventors of such Manufactures, which others at the Time of the Making of such Letters Patents and Grants did not use, so they be not contrary to the Law, nor mischievous to the State, by raising of the Prices of Commodities at home, or Hurt of Trade, or generally inconvenient, but that the same shall be of such Force as they were or should be, if this Act had not been made, and of none other: And if the same were made for more than One and Twenty Years, That then the same for the Term of One and Twenty Years only, to be accounted from the Date of the first Letters Patents and Grants thereof made, shall be of such Force as they were or should have been, if the same had been made but for Term of One and Twenty Years only, and as if this Act had never been had or made, and of none other.

Letters, Patents to
use new Manufac-
tures, revived.

VI. Provided also, and be it declared and enacted, That any Declaration before-mentioned shall not extend to any Letters Patents and Grants of Privilege for the Term of Fourteen Years or under, hereafter to be made, of the sole Working or Making of any Manner of new Manufactures within this Realm, to the true and first Inventor and Inventors of such Manufactures, which others at the Time of Making such Letters Patents and Grants shall not use, so as also they be not contrary to the Law, nor mischievous to the State, by raising Prices of Commodities at home, or Hurt of Trade, or generally inconvenient: (1) The said Fourteen Years to be accounted from the Date of the first Letters Patents, or Grant of such Privilege hereafter

(1) A Patent was held void for an Invention by which more Caps and Bonnets could be thickened by a Pulling Mill in one Day than by the Labour of Fourteen Men who got their Livings by it, on the Ground of its being inconvenient to turn so many Labouring Men to Idleness—3 Inst. 184. This Mode of contemplating the Effect of Machinery to shorten Labour is a fair Specimen of the Wisdom of our Ancestors upon Questions of Political Economy. A very different View of the Subject had taken place at the Time of the Trial respecting Arkwright's Patent (1785), when the Inconvenience urged arose from the Confining the Benefit of an Invention of such extensive Consequence to a single Individual. In the *Scire Facias* in that Case, one of the Objections alleged against the Patent was, that it was *prejudicial and inconvenient to the Subjects in general*, and Issue was taken upon that Allegation; but at the Opening of the Trial, Buller, Justice, interposed, intimating his Opinion that it was a mere consequential Issue, and a Question of Law upon which the Prosecutors could not be permitted to give any Evidence; and that if it was necessary to Attack the Patent upon those general Words of the Act of Parliament, it should be stated in what respect it was so, and then the Fact would be put in Issue; and after some Discussion, it was agreed that the Case should be tried on the other Issues in which the Patent was impeached on specific Grounds.

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21 Jac. 1. c. 3.

to be made, but that the same shall be of such Force 'as they should be, if this Act had never been made, and of none other. (2)

VII. Provided also, and it is hereby further intended, declared, and enacted by Authority aforesaid, That this Act or any Thing

(2) The general Objects of this Act in suppressing Monopolies having been fully accomplished, the only Questions which now arise respecting it are upon the Effects of Patents granted under this Proviso. The Patents are granted in an established and uniform Form, except so far as relates to stating the particular Subject of the Grant, and contain a Proviso that if the Patentee should not particularly describe and ascertain the Nature of his Invention, and in what Manner the same is to be performed, by an Instrument in Writing to be enrolled in Chancery within One Month after the Date, the Grant shall be void. The Instrument so required is called the Specification. The Terms of the Grant are usually very general and only express the Object and Purpose of the Invention, the particular Description of which is reserved for the Specification, which may be considered as incorporated in the Patent. The Points to be considered with reference to the Law of Patents may be divided into the following Heads:—1st, the Nature and Subject Matter of the Invention—2nd, the Originality—3rd, the Sufficiency of the Specification—4th, the Degree of Similarity, which Amounts to an Infracton—5th, the judicial Proceedings by which the Patent may be supported, (a) by Action at Law, (b) by Suit in Equity, or rescinded, viz. (c) by Writ of *Scire Facias*.

I. Upon the first and most of the other Points respecting the Validity of Patents the fullest Information is to be derived from the Cases respecting the Patent granted to Mr. Watt, for an Invention for lessening the Consumption of Steam and Fuel in Fire Engines. The Specification begins with stating, "My Method of lessening the Consumption of Steam consists of the following PRINCIPLES;" and states the Addition of some Vessels called Condensers with some Rules for their Construction and Application. It was objected that a Patent could not be granted merely for a Method or Principle; but that it must be for a formed and organized Machine, or Instrument, or Manufacture. The Judges of the Common Pleas, in *Boulton v. Bull*, 4 H. Bl. 463, were equally divided as to the Validity of this Objection; Heath and Buller, J. being in favour of the Patent, and Rooke, J. and Eyre, C. J. in favour of the Objection; but in the subsequent Case of *Hornblower v. Boulton* in error in the King's Bench, 8 T. R. 95, the Patent was supported by the unanimous Opinion of all the Judges. The difference of Opinion which subsisted does not appear to relate so much to the Rules of Law, upon which the Question ought to be decided, as to the Construction of the particular Specification; the Judges whose Opinions were conformable to the Patent considered the Specification as merely indicating a general Method or Principle, the other Judges conceiving those Words connected with the subsequent Description as sufficiently designating a specific Invention. From these Opinions I have thought it eligible to make the following Extracts, with reference to the general Nature of the Subject. Rooke, J. "A new invented Method conveys to my Understanding the Idea of a new Mode of Construction; I think these Words are tantamount to Fire Engines of a newly-invented Construction. It is objected that the Patentee professes to set forth the Principles only, but we are not bound by what he professes to do but what he really has done—it seems but reasonable that if he sets forth his Improvement intelligibly, his Specification should be supported, though he professes only to set forth the Principle. The Term Principle is equivocal." The Object of the Patentee was "to condense the Steam without cooling the Cylinder—the Means are set forth." "As to the Articles of, the Specification which denote Intention only, and do not state the Thing to which it is to be applied, I do not think he could maintain an Action for Breach of these Articles; for he cannot anticipate the Protection before he is entitled to it by practical Accomplishment."—Heath, J. "The Question is, inasmuch as this Invention is to be put in Practice by Means of Machinery, whether the Patent ought not to have been for one or more Machines. If Method and Machinery had been used by the Patentee as convertible Terms, and the same Consequences would result, from both, it might be too strong to say, that the Inventor should lose his Patent by the Misapplication of his Term." The Proviso in the Statute is

therein contained shall not in any wise extend, or be prejudicial to any Grant or Privilege, Power, or Authority whatsoever heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force.

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for new Manufactures: Such Manufactures are reducible to two Classes, the first includes Machinery, the second Substances (such as Medicines) formed by Chemical and other Processes where the vendible Substance is the Thing produced, and that which operates preserves no permanent Form. In the first Class the Machine, and in the second the Substance produced is the Subject of the Patent. I approve of the Term *Manufacture* in the Statute, because it precludes all nice Refinements; that which is the Subject of a Patent ought to be specified, and it ought to be "That which is vendible, otherwise it cannot be a Manufacture." "The Patent must be for the vendible Matter, not for the Principle." "The Organization of a Machine may be the Subject of a Patent, but Principles cannot."—Buller, J. "Upon the State of the Case, I cannot say there is any Thing substantially new in the Manufacture; and it was admitted, that there were no new Particulars in the Mechanism—that it was not a Machine or Instrument which the Plaintiffs had invented—that Mechanism was not pretended to be new in any of its Parts—that this Engine does consist of all the same Parts as the Old Engine—and that the particular Mechanism is not necessary to be considered." The very Statement of what a Principle is proves it not to be a Ground for a Patent. It is the first Ground and Rule for Arts and Sciences, or in other Words, the Elements and Rudiments of them, a Patent must be for some new Production from those Elements, and not for the Elements themselves. "But it was said that though an Idea or a Principle alone would not support a Patent, yet an Idea reduced into Practice, or practical Application of a Principle, was a good Foundation for a Patent, and was the present Case. The mere Application or Mode of using a Thing was admitted not to be a sufficient Ground, that if a Man of Science were to devise the Means of making a double Use of what was known before, he could not have a Patent for that; the Method and Mode of doing a Thing are the same, and I think it impossible to support a Patent for a Method only, without having carried it into Effect and produced some new Substance. A Principle reduced into Practice can only mean a Practice founded on Principle, and that Practice is the Thing done or made, or in other Words the Manufacture which is invented." "Mechanical and Chemical Discoveries all come within the Description of Manufactures, and it is no Objection to either of them that the Articles of which they are composed were known and were in Use before, provided the Compound Article which is the Subject of the Invention was new. But then the Patent must be for the specific Compound, and not for all the Articles and Ingredients of which it was made."—Eyre, C. J. "It was admitted in the Arguments that the Word *Manufacture* in the Statute was of extensive Signification; that it applied not only to Things made but to the *Practice of Making*, to Principles carried into Practice in a new Manner, to new Results of Principles carried into Practice. Under *Things made* we may class, in the first Place, new Compositions of Things, such as Manufactures in the most ordinary Sense of the Word; secondly, all Mechanical Inventions, whether made to produce new or old Effects, for a new Piece of Mechanism is certainly a Thing made. Under the *Practice of Making*, we may class all new artificial Manners of operating with the Hand or with Instruments in common Use; new Processes in any Art producing Effects useful to the Public, when the Effect produced is some new Substance or Composition of Things, it should seem that the Privilege of the sole making or working ought to be for such new Substance or Composition, without regard to the Mechanism or Process by which it has been produced, which, though perhaps also new, will be only useful as producing the new Substance." When the Effect produced is no Substance or Composition of Things, the Patent can only be for the Mechanism, if new Mechanism is used; or for the Process, if it be a new Method of operating with or without old Mechanism, by which the Effect is produced. And this compendious Analysis of new Manufactures mentioned in the Statute satisfies my doubt, whether any Thing could be the Subject of a

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Warrants granted to Justices saved.

VIII. Provided also, That this Act shall not extend to any Warrant or Privy Seal, made or directed, or to be made or directed by his Majesty, his Heirs or Successors, to the Justices of the Courts of the King's Bench or Common Pleas, and Barons of the Exchequer,

Patent, but Something organized and capable of precise Specification. "An improper Use of the Word *Principle* set forth in this Specification has, I think, served to puzzle the Case. Undoubtedly there can be no Patent for a mere Principle; but for a Principle so far embodied and connected with corporeal Substances as to be in a Condition to act and to produce Effects in any Art, Trade, Mystery or manual Occupation, I think there may be a Patent; now this is, in my Judgment, the Thing for which the Patent was granted. It is not that the Patentee has conceived an abstract Notion that the Consumption of Steam in Fire Engines may be lessened, but he has discovered a practical Manner of doing it, and for that practical Manner of doing it he has taken out his Patent. It is a Patent not for a Principle but a Process—it is no abstract Principle—it is in its very Statement clothed with practical Application—it points out what is to be done"—Lord Kenyon, "The principal Objection made to this Patent is, that it is a Patent for a philosophical Principle only, neither organized nor capable of being organized; and if the Objection was well founded in Fact it would be decisive, but I do not think it is so. By comparing the Patent and the Manufacture (qu. Specification) together, it evidently appears that the Patentee claims a Monopoly for an Engine or Machine composed of Mechanical Parts which are to produce the Effect described, and that the Mode of producing this is so described as to enable Mechanics to produce it."—Ashurst, J. expressed his Opinion very generally in favour of the Patent.—Grose, J. "It seems to me that this is not a Patent for a mere Principle, but for the working and making of a new Manufacture within the Words and Meaning of the Statute." "The Specification describes the Principles of the Method, and the Method by which those Principles are to be carried into Effect."—He also states a Method by which the Engine may be worked by the alternate Expansion and Contraction of the Steam. This Method, however, if not effected or accompanied by a Manufacture, I should hardly consider as within the Statute; but it seems to me that in this Specification he does describe a new Manufacture by which his Principle is realized. The Patent states the Principles on which the Inventor proceeds, and shews in his Specification the Manufacture by Means of which those Principles are to take Effect.—Lawrence, J. "If it were necessary to consider whether or not mere abstract Principles are the Subject of a Patent, I should feel great difficulty in deciding that they are, but that Consideration is unnecessary upon the present Occasion; because, by looking at the Patent and the Recital in the Act of Parliament for continuing it for a longer Term, it appears that Watt applied for and obtained a Patent for an Engine or Mechanical Contrivance for lessening the Consumption of Steam." The Specification states that the Method consists in certain Principles, as they are called, which are described in the Specification—the Statute reciting that the King had granted the sole Benefit of making and vending certain Engines, and that he had enrolled a Description of the said Engine. From this therefore it is clear that the Legislature* understood that the Patent was for an Engine for some Mechanical Contrivance. Engine and Method mean the same Thing, and may be the Subject of a Patent. "Method," properly speaking, is only placing several Things and performing several Operations in the most convenient Order; but it may signify a *Contrivance* or *Device*, so may an *Engine*, and therefore I think it may answer the Word "Method." So "Principle" may mean a

* It is to be regretted, that such Arguments as this should be resorted to, by a Judge of the superior Intellect which indisputably belonged to Sir Roderick Lawrence. The Patent was granted for the ordinary Term; an Act of Parliament was passed for the Extension of it to a longer Period, expressly saving all Objections to the original Patent; and from the whole Tenor of the Act it is evident, that nothing could be more distant from the Intention of it, than, by Means of the incidental Expressions used in denoting the Subject of the Invention, to decide or prejudice any Question as to its Nature, or to induce a different View of the Case, in consequence of the Provision for the Extension of the Term, from that which ought to have been taken if no such Extension had been made, and the Case had rested upon its original Merits.

Justices of Assize, Justices of Oyer and Terminer and Gaol-delivery, Justices of the Peace, and other Justices for the Time being, having Power to hear and determine Offences done against any Penal Statute, to compound for the Forfeitures of any Penal Statute, depending in

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mère elementary Truth, but it may also mean constituent Parts, and in effect the Specification is this, "the Contrivance by which I lessen the Consumption of Steam consists in the following Principles, that is, constituent or elementary Parts, a Steam Vessel," &c. "That is the Description of the Thing when put into different Language." In the above Extracts I have purposely kept as much as possible out of View the precise Circumstances and the Qualities of the particular Invention, with regard to which I should feel considerable Difficulty in assenting to the Conclusions that were finally drawn, conceiving that a better Elucidation would be given to the general Subject by shewing the Grounds and Principles upon which, in the Opinion of the Judges, the Question, as to the Nature and Character of the Subject, ought to be decided, than by mixing the Discussion with an Enquiry with respect to the Justness of their particular Applications. Two Principles may, with Confidence, be deduced from the Case, viz. 1st, that the Subject Matter of the Privilege must be a defined and specific Contrivance; and, 2ndly, that the Character of the Invention is to be judged from a Consideration of the Nature of the Invention as particularly described, and not by any verbal Criticism upon the general Terms which may be accidentally used in characterizing it. The Question respecting the Validity of a Patent, for an Addition to a Subject previously known, falls rather under the following Head of Discussion than the Present.

II. As to the Originality of the Invention. In *Edgebury v. Stephens*, 2 Salk. 447, it was ruled, that the first Introducer of an Invention, practised beyond Sea, should be deemed the first Inventor.—A previous Invention, not brought into Practice, does not impugn the Claim to Originality in the Grantee of the Patent. Therefore in the Case on *Dolland's Object Glasses*, cited by Buller, J. in *Bolton v. Bull*, 2 H. B. 487, the Question was whether *Dolland* or *Hall* was the first and true Inventor, within the Meaning of the Statute; *Hall* having first made the Discovery in his Closet, but never made it public, and on that Ground *Dolland's* Patent was confirmed.

With respect to a Variation in the Form or Manner of an Invention formerly used, the following View taken by Buller, J. of the Evidence, as to one Part of the Machine that was the Subject of *Arkwright's* Trial, will not be immaterial—"They had that before which answered the same Purpose, though not made exactly in the same Form; if it was new it was of no Use, but they say it was not new, for though it was not precisely in the same Shape in Substance, it was the same Thing."

In a Trial on the Validity of *Tennant's* Patent, for a Bleaching Liquor, a Person stated that he had used the same Preparation in Bleaching for five or six Years, and had kept it a Secret from all but his Partners, and two Servants, concerned in preparing it. Another Witness proved that he had suggested to the Patentee that he would probably attain his End, by a certain Method, which *Tennant* afterwards told him had succeeded.—The Plaintiff was consulted on this Evidence, because he could not prove that the Object of it was a new Discovery, or that he himself was the sole Inventor.—*Collier on Patents*, 117. The latter Circumstance can hardly be supposed to have had much Influence on the Decision, for it would be contrary to all Reason and Authority, to contend that the mere Suggestion of the probable Success attending the Adoption of a given Method to obtain an Object contemplated by the Party to whom the Suggestion is made, shall deprive such Party of the Credit of Originality, in an Invention which he first carried into practical Effect; and it would be almost impossible in the Nature of Things, for any Invention to be deemed original, if it could be construed otherwise, by shewing that the Inventor had been assisted by some accidental Hints from those whom he had consulted in carrying on the Process of his Discovery. Upon Enquiry from the Attorney concerned for the Plaintiff in the Cause, I find that positive Evidence was given of the Invention having been in public Use, and that such Evidence was the principal Ground of the Decision.

Under this Head it will be proper to advert to the Validity of a Patent, for an Addition to an Invention previously existing. In 3 Just. 184. it is said,

No 1. Suit and Question before them, or any of them respectively, after
21 Jan. 1 c. 3 Plea pleaded by the Party Defendant.

Charters granted
to Corporations,
saved
3 Inst. 185.

IX. Provided also, and it is hereby further intended, declared and enacted, That this Act or any Thing therein contained shall not

that such a Privilege as is not contrary to Law, must be essentially and substantially newly invented; but if the Substance was *in esse* before, and a new Addition thereunto, though that Addition make the former more profitable, yet it is not a new Manufacture in Law, and so it was resolved, in the Exchequer Chamber, 15 Eliz in Bircot's Case, for a Privilege, concerning the preparing and melting of Lead Ore; for there it was said, that that was but to put a new Button to an old Coat, and it is much easier to add than invent.—In Boulton v. Bull, Buller, J observed, “that it did not appear what were the particular Facts of that Case, and there seemed to be more Quantities than Solidity in the Reason assigned. If the Button were new, he did not feel the Weight of the Objection, that the Coat on which the Button was to be put, was old.”—Mr. J. Buller also mentioned the Case of Morris v. Branson, before Lord Mansfield, in which a Patent for an Addition to the old Stocking Frame was supported, and said that since that time, it had been the generally received Opinion at Westminster Hall, that a Patent for an Addition is good, 2 H. B. 489.—“But then it must be for the Addition only, and not for the old Machine too. In Jessop's Case the Patent was held to be void, because it extended to the whole Watch, and the Invention was a particular Movement only. Where a Patent is taken for an Improvement only, the Public have a right to purchase that Improvement by itself, without being incumbered with other things.”—*ibid.*

One of the strong Objections to Boulton and Watt's Patent was, that it extended to the whole Machine, and not merely to the new Invention, and the Opinion of Buller, J. was in Favor of the Objection, but in the Court of King's Bench, the Patent was held to extend only to the Addition, and the Court thought that the Patent was only for the additional Improvement. 8 T. R. 95. Upon this as well as the preceding Part of the Case, it is not material to the Exposition of the general Principle to examine the Accuracy of the Opinion, which finally prevailed in the particular Instance.

In Turner v. Winter, 11 E. 109, Note, the Patent was for Ground Lace, and the Specification went generally to the Invention of mixing Silk and Cotton Thread upon the Frame. This had been done before, but in a less convenient Manner, but Buller, J. held, that as the Patent claimed the exclusive Liberty of making Lace, composed of Silk and Cotton Thread mixed, and not of any particular mode of mixing it, it was void.

There is no Objection upon which Patents more frequently fail, or which it requires greater Caution to avoid, than making the Grant, as described in the Specification, more extensive than the Discovery; and it is settled, that if the Specification is objectionable on this Ground, it defeats the entire Patent, and not merely so much of it as relates to what is not newly invented. When the Nature of the Subject renders it necessary in the Description, to blend the new Discovery with a preceding Subject, it is desirable, in order to avoid Misapprehension, particularly and distinctly to declare what Part of the Description is intended to be relied upon as constituting the Discovery for which the exclusive Privilege is claimed.—See Harman v. Plaync, 11 East. 101, more particularly stated *infra*. A Patent was granted for an Improvement upon a Machine, for which there was a subsisting Patent, as not intruding upon the Rights of the former Patentee; but it was said, that if the Improvements could not be used without the Engine for which the Patent had been granted, they must wait for the Expiration of that Patent.—*Ex-parte Fox*. 1st V. and B. 67.

III. With respect to the Sufficiency of the Specification, the general Rules, which are always acted on, are clearly laid down in Turner v. Winter, 1 T. R. 603, where it was said, per Ashurst, J. “It is incumbent on the Patentee, to give a Specification of the Invention, in the clearest and most unequivocal Terms of which the Subject is capable; and if it appears that there is any unnecessary Ambiguity, affectedly introduced into the Specification, or any Thing which tends to mislead the Public, in that Case the Patent is void.”—If the Process as directed by the Specification does not produce that which the Patent professes to do, the Patent itself is void. It is certainly of consequence that the Terms of a Specification should express the Invention in the clearest and

in any wise extend or be prejudicial unto the City of London, or to any City, Borough, or Town Corporate within this Realm, for or concerning any Grants, Charters, or Letters Patents, to them or any of them made or granted, or for or concerning any Custom or Customs

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most explicit Manner, so that a Man of Science may be able to produce the Thing intended, without the Necessity of trying Experiments." Buller, J. "Whenever the Patentee brings an Action on his Patent, if the Novelty or Effect of the Invention be disputed, he must shew in what his Invention consists, and that he produces the Effect proposed by the Patent, in the Manner specified—If he could make the matter described, with only two or three of the Ingredients specified, and he has inserted others which will not answer the purpose, that will avoid the Patent. So if he make the Article, for which the Patent is granted, with cheaper Materials than those which he has enumerated, although the latter will answer the Purpose equally well, the Patent is void; because he does not put the Public in Possession of his Invention, or enable them to derive the same Benefit, which he himself does." In the particular Case, there were three Objections, which were all held fatal:—1st, That in order to produce the Effect, you must go out of the Patent;—2nd, That a Substance was mentioned in general Terms, of which there were three Species, one whereof only was applicable to the Process in Question;—3rd, That the Patent professed to do three Things, and that by failing in one of them it was void. Buller, J. cited a Case before Lord Mansfield, for infringing a Patent for Steel Trusses, whence it appeared that the Patentee, in tempering the Steel, rubbed it with Tallow, which was of some Use in the Operation, and because this was omitted, the Specification was held to be insufficient, and the Patent was avoided. This certainly was carrying the Matter to the utmost possible Degree of Strictness, and rather beyond the fair Claims of public Convenience.—In the Trial on Arkwright's Patent, Buller, J. in his Directions to the Jury, expressed himself with respect to the Specification as follows—"It is clearly settled as Law, that a Man, to entitle himself to the Benefit of a Patent, must disclose his Secret and specify his Invention in such a Way, that others may be taught by it to do the Thing for which the Patent is granted, and it must put the Public in Possession of the Secret, in as ample and beneficial a Way as the Patentee himself had used it; and, therefore, unless the Discovery be true and fair, the Patent is void. If the Specification, in any part of it, be materially false or defective, the Patent is against Law and cannot be supported. It has been truly said, that if the Specification be such, that mechanical Men of common Understanding can comprehend it, to make a Machine by it, it is sufficient; but then it must be such that the Mechanics may be able to make the Machine, by following the Directions of the Specification, without any new Inventions, or Additions of their own." In the same Case among various other Objections, it appeared; that some Things were specified as Part of the Invention, which were no Part of the Engines actually used; with respect to which, the learned Judge observed—"If those are of no use, but to be thrown in merely to puzzle, I have no Difficulty to say, that upon that Ground alone, the Patent is void; for it is not that fair, full, true Discovery, which the Public have a right to demand."—In *Boulton v. Bull*, 2 H. B. 463, the Compliance with the Rule of Law upon this Subject, appears to be very accurately stated, by the finding in the Special Verdict, "That the Specification is of itself sufficient to enable a Mechanic, acquainted with the Fire Engines, previously in use, to construct Fire Engines producing the Effect of lessening the Consumption of Fire and Steam, in Fire Engines upon the Principle invented by the Patentee."

In *Harmer v. Playne*, 11 East, 101, a Patent had been granted for a Machine, of which the Specification was duly inrolled; and another Patent was afterwards granted to the same Person for Improvements on the Machine, the Specification of which described the whole Machine in its improved State, without distinguishing the Machine in its improved State, from the State and Condition of it under the former Patent; and the Court of King's Bench certified to the Lord Chancellor in Favour of the Validity of the Patent. Lord Ellenborough said, upon this Occasion, "Reference must often be made, in these Cases, to Matters of general Science, as the Party must carry a reasonable Knowledge of the Subject-matter with him, in Order clearly to comprehend Specifications of this Nature, though fairly intended to be made."

No. 1.
21 ac. 1. c. 2.

used by or within them or any of them; or unto any Corporations, Companies or Fellowships of any Art, Trade, Occupation or Mys-

IV. There is no Discussion in any of the Authorities with regard to the Degree of Similarity to the Invention, which is the Subject of a Patent, which will amount to an Infraction; but the true Principles of Decision, in this Respect, seem to be comprized in the following Extracts from the Opinion of *Rooke, J.* in *Boulton v. Bull*, 2 H. B. 479: "The mechanical Improvement, and not the Form of the Machine, is the Object of the Patent; and if this mechanical Improvement is intelligibly specified, of which a Jury must be the Judges, we may, I think, protect the Patentee"—"Infringement, or not, is a Question for the Jury."

V. With respect to the Remedy for Infraction of a Patent, the most usual Course is by Action at Law. For the Form of Declaration, vi. 2 *Chitty* on Pleadings, §17, 8 *Went.* 431. As to the Evidence to be given in the first Instance, *Buller, J.* in *Turner v. Winter*, 1 T. R. 602, already cited, said, "I hold that a Plaintiff must give some Evidence to shew what his Invention was, unless the other Side admit that it has been tried and succeeds. Whenever the Patentee brings an Action on his Patent, if the Novelty or Effect of the Invention be disputed, he must shew in what his Invention consists, and that he produced the Effect proposed by the Patent in the Manner specified. Slight Evidence of this on his Part is sufficient, and it is then incumbent on the Defendant to falsify the Specification."

Another Mode of Redress against the Infraction of Patents is by Bill in Equity for an Injunction. Formerly an Injunction was not granted, if the Validity of the Patent was disputed, without a previous Trial at Law—*An. 1 Vern.* 120. [The Case related to the Validity of a Patent for the Sale of Bibles, and not to any Patent founded upon the Exception in the Statute 21 Jac. but I apprehend, that the Principle would be the same.] *Tottells v. University of Cambridge*, 1 *Vern.* 275, and the same was held by *Lord Clare*, as Chancellor of Ireland, in *Grierson v. Jackson*, Irish T. R. 304. But more modern Cases have taken a different Course. In *Boulton v. Bull*, 3 *Vesey*, 140, an Injunction was obtained, that the Question of the Validity of the Patent might be tried at Law, and the Judges of the Common Pleas having been equally divided in the Case so often cited in the present Note, the Lord Chancellor said, that he could not put the Patentees upon the Acceptance of Terms, that, upon collateral Reasons, they may think disadvantageous to the Exercise of the Right of which they are in Possession; neither can I put them out of Possession, upon the Difference of Opinion of the Court. I will not put them to Compensation—I will not disturb the Possession of their specific Right. It is of Notoriety, that this Fire-engine has been erected in many Parts of the Country with great Advantage. And this Doctrine was confirmed by *Lord Eldon*, in the Case of the Universities of Oxford and Cambridge *v. Richardson*, 6 *Vesey*, 629; and in *Harmer v. Planc*, 14 *Vesey*, 130, when his Lordship said, "When the Crown, on Behalf of the Public, grants Letters Patent, the Grantee entering into a Contract with the Crown, the Benefit of which Contract the Public are to have, and the Public have permitted a reasonably long and undisputed Possession under Colour of the Patent, the Court has thought, upon the Fact of that Possession proved against the Public, that there is less Inconvenience in granting the Injunction until the legal Question can be tried, than in dissolving it at the Hazard that the Grant of the Crown may in the Result prove to have been valid."

I cannot help feeling, that there is something unsatisfactory in the Principles which have been just mentioned. The Analogy between the actual and manifest Possession of a corporeal Subject, and the supposed Possession of a Patentee, is apparently a very fallacious one. In the first Instance, there is, from the Nature of the Subject, a Right of Possession and Property somewhere, and the fair Presumption is in Favour of the actual specific Possession, which, in general, could not have been obtained against those having the Right without an immediate Resistance; whereas, with respect to Monopolies, the Presumption is in Favour of the general Liberty of the Community to apply their Talents and Industry according to their own Discretion, subject, under particular Circumstances of a peculiar Nature, to Restraint, on Behalf of favoured Individuals—but that Restraint is the Exception, which, in the Nature of the Thing, requires to be supported by full and absolute Proof. The

tery, or to any Companies or Societies of Merchants within this Realm, erected for the Maintenance, Enlargement, or ordering of any

No. 1.
21 Jac. I. c. 3.

Idea of a Contract by the Crown, in Favour of the Public, appears rather of a fanciful Nature. There is no absolute Contract on the Part of the Grantee—no Stipulation on his Part, which he is under any positive Obligation to perform, but a mere Condition attached to the Right conferred, and the Subsistence of which Condition is essential to the Validity of the Right. The Crown, in granting the Right with the Condition attached, assumes Nothing as to the Subsistence or Non-subsistence of the Condition, which is entirely Mat et of Proof on the Part of the Grantee, and of Proof in the Nature of a Condition precedent, as completely as if it had been expressed in Terms, that in Case the Grantee should prove the Requisites prescribed, he should be entitled to the Benefit conferred—and in this View of the Subject, no material Detriment can arise from the Patent being admitted to pass upon the *ex parte* Representation of the Party applying for it as a Matter of official Routine, without any judicial Contest with the Parties interested in opposing it, and which Contest could not, from the Nature of the Case, be carried on with any beneficial Effect; he takes the Proof of the Validity on himself, and there is no Harm done—but if, in Substance and Effect, the mere Grant itself carries a Presumption in Favour of its Validity, an Injury is committed to the Public, by the effectual Operation of the Grant during the Period that a legal Question on the Right can be kept in Suspence; and the Cases in Substance and Effect, couler that Right for that Period, however repugnant to the Restrictions of the Statute. If the Right of the Patentee is infringed, he has a Claim to Redress by Damages at Law or an Account in Equity, upon establishing his Right, although not so full and adequate a Remedy as by Injunction; but if, by an unfounded Grant of Monopoly, the general Rights of the Community are restrained during the Period of Inquiry, all Redress or Compensation to those whose general Liberty is improperly restrained, is from the Nature of the Thing entirely out of the Question. The supposed Possession against the Public is the mere Assertion by the Party of a Right, which Right depends upon his establishing, by positive Proof, the Existence of Facts, of which the Existence or Non-existence is, *a priori*, equally uncertain; and Nothing can be more completely vague and indefinite, than the additional Requisite of “a reasonably long and undisputed Possession.” It is observable, that while the Courts of Equity sustain the Patents upon the supposed Presumption of Validity, which arises from the mere Circumstance of their having been granted, they decline entering into any actual Examination of the Question upon which such Validity depends. To the Support of Patents on Account of the supposed Bargain with the Crown, on Behalf of the Public, an Answer appears to arise from the Statute itself, which was so far from regarding the Crown in the Character of a Trustee for the public Benefit, that the gross and flagrant Abuses arising from the assumed Prerogative of the Crown, for the Benefit of particular Favourites, in Opposition to the general Interests of the Public, was the Object and Foundation of the Interposition of the Legislature; and when the Prerogative, of which it was a primary Object to check the Abuse, was permitted to be returned, under certain Conditions and Modifications, it can hardly be supposed to have been intended, that the mere Act assumed to be done should be in any degree regarded as Evidence of the Subsistence of the Conditions, upon which a particular Exception was allowed, to the general Restriction intended to be imposed. I cannot quit this Subject without adverting to the Observation of Lord Loughbrough, as to the Notoriety of the particular Patent, which was immediately before him. The Excellence and Notoriety of an Invention, can never be a proper Matter of judicial Knowledge; the legal Objections to the Patent of Bolton and Watt, arose from the very Circumstance which constituted the greatest Excellence of the Invention; viz. that the Discovery was of a general Principle, and not of a particular organized Machine.—The Hardship that the Discoverer of a Principle of such manifest and extensive Utility, should be deprived upon a Technical Objection, of the Fruit of his Ingenuity, would naturally excite a considerable Disposition in his Favour, and might possibly give a greater Effect to the legal Arguments in Support of his Right, than such Arguments could have received, if resting upon their own intrinsic Merits, and applied to a less favourable Subject; but the Views which may be thus excited, by a particular Cause, are followed by a general Effect.

No. 1.

21 Jac. I. c. 3.

Trade of Merchandize; but that the same Charters, Customs, Corporations, Companies, Fellowships and Societies, and their Liberties, Privileges, Powers, and Immunities, shall be and continue of such Force and Effect as they were before the Making of this Act, and of none other; any Thing before in this Act contained to the contrary in any wise notwithstanding.

Letters Patent
that concern
Printing, Salt
petre, Gunpowder,
great Ordnance,
Shot, or Offices,
saved.

X. Provided also, and be it enacted, That this Act, or any Declaration, Provision, Disablement, Penalty, Forfeiture, or other Thing before-mentioned, shall not extend to any Letters Patents or Grants of Privilege heretofore made, or hereafter to be made, of, for, or concerning Printing, nor to any Commission, Grant or Letters Patents, heretofore made, or hereafter to be made, of, for, or concerning the Digging, Making, or Compounding of Salt-petre or Gunpowder, or the Casting or Making of Ordnance, or Shot for Ordnance, nor to any Grant or Letters Patents heretofore made, or hereafter to be made, of any Office or Offices heretofore erected, made or ordained, and now in Being, and put in Execution, other than such Offices as have been decreed by any his Majesty's Proclamation or Proclamations: But that all and every the same Grants, Commissions, and Letters Patents, and all other Matters and Things tending to the Maintaining, Strengthening, and Furtherance of the same, or any of them, shall be and remain of the like Force and Effect, and no other, and as free from the Declarations, Provisions, Penalties, and Forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

This Act shall not
extend to Com-
missions for Allum
Mines.

XI. Provided also, and be it enacted, That this Act, or any Declaration, Provision, Disablement, Penalty, Forfeiture, or other Thing before-mentioned, shall not extend to any Commission, Grant, Letters Patents or Privilege heretofore made, or hereafter to be made, of, for or concerning the Digging, Compounding, or Making of Allum or Allum Mines, but that all and every the same Commissions, Grants, Letters Patents and Privileges, shall be and remain of the like Force and Effect, and no other, and as free from the Declarations, Provisions, Penalties, and Forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

XII. [Nor to the Liberties of Newcastle-upon-Tyne, nor to Licences of keeping Taverns.]

XIII. [Nor to Letters Patents granted to Sir Robert Mansel, Knt. or to James Maxwell, Esq.]

XIV. [Nor to those granted to Abraham Baker, or Lord Dudley.]

No. 2.

8 Anne, c. 19.—An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.

8 Anne, c. 19.

See the Case of
Miller v. Taylor,
in 4 Bur. 2303 to
2418.

‘WHEREAS Printers, Booksellers, and other Persons have of late frequently taken the Liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, Books and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For preventing therefore such Practices for the future, and for the Encouragement of learned Men to compose and write useful Books;

May it please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Tenth Day of *April*, One Thousand Seven Hundred and Ten, the Author of any Book or Books already printed, who hath not transferred to any other, the Copy or Copies of such Book or Books, Share or Shares thereof, or the Bookseller or Booksellers, Printer or Printers, or other Person or Persons, who hath or have purchased or acquired the Copy or Copies of any Book or Books, in order to print or reprint the same, shall have the sole Right and Liberty of printing such Book and Books for the Term of One and Twenty Years, to commence from the said Tenth Day of *April*, and no longer; and that the Author of any Book or Books already composed, and not printed and published, or that shall hereafter be composed, and his Assignee or Assigns, shall have the sole Liberty of printing and reprinting such Book and Books for the Term of Fourteen Years, to commence from the Day of the first publishing the same, and no longer; and that if, any other Bookseller, Printer, or other Person whatsoever, from and after the Tenth Day of *April*, One Thousand Seven Hundred and Ten, within the Times granted and limited by this Act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such Book or Books, without the Consent of the Proprietor or Proprietors thereof first had and obtained in Writing, signed in the Presence of two or more credible Witnesses; or knowing the same to be so printed or reprinted, without the Consent of the Proprietors, shall sell, publish, or expose to Sale, or cause to be sold, published, or exposed to Sale, any such Book or Books, without such Consent first had and obtained as aforesaid: Then such Offender or Offenders shall forfeit such Book or Books, and all and every Sheet or Sheets, being Part of such Book or Books, to the Proprietor or Proprietors of the Copy thereof, who shall forthwith Damask and make Waste Paper of them; and further, That every such Offender or Offenders shall forfeit One Penny for every Sheet which shall be found in his, her, or their Custody, either printed or printing, published, or exposed to Sale, contrary to the true Intent and Meaning of this Act; the one Moiety thereof to the Queen's most Excellent Majesty, her Heirs and Successors, and the other Moiety thereof to any Person or Persons that shall sue for the same, to be recovered in any of her Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoin, Privilege, or Protection, or more than one Imparllance shall be allowed.

II. And whereas many Persons may through Ignorance offend against this Act, unless some Provision be made, whereby the Property in every such Book, as is intended by this Act to be secured to the Proprietor or Proprietors thereof, may be ascertained, as likewise the Consent of such Proprietor or Proprietors for the printing or reprinting of such Book or Books may from Time to Time be known; Be it therefore further enacted by the Authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any Bookseller, Printer, or other Person whatsoever, to the Forfeitures or Penalties (1) therein mentioned, for or by reason of the printing or reprinting of any Book or Books without such Consent, as aforesaid, unless the Title to the Copy of such Book or Books hereafter published shall, before such Publication, be entered in the

No. 2.

8 Ann. c. 19.

After 10 April, 1710, the Authors or Books already printed, who have not transferred their Rights, and the Booksellers, &c. who have purchased Copies, shall have the sole Right of printing them for the Term of 21 Years

And the Authors of Books not printed, to have the sole Right of printing for fourteen Years.

Punishment of Booksellers, &c. printing without Consent of the Proprietor.

Copies of Books to be entered before Publication in the Register Book of the Company of Stationers; which may be inspected at any Time without Fee.

(1) An Action on the Case may be maintained without an Entry at Stationers' Hall.—*Beckford v. Hood*, 7 T. R. 620.

No. 2.
8 Anne, c. 19.

Register Book of the Company of Stationers, in such Manner as hath been usual, which Register Book shall at all Times be kept at the Hall of the said Company, and unless such Consent of the Proprietor or Proprietors be in like Manner entered as aforesaid, for every of which several Entries six Pence shall be paid, and no more; which said Register Book may, at all seasonable and convenient Times, be resorted to, and inspected by any Bookseller, Printer, or other Person, for the Purposes before-mentioned, without any Fee or Reward; and the Clerk of the said Company of Stationers shall, when and as often as thereunto required, give a Certificate under his Hand of such Entry or Entries, and for every such Certificate may take a Fee not exceeding six Pence.

Penalty of the
Clerk refusing so
to do,

III. Provided nevertheless, That if the Clerk of the said Company of Stationers for the Time being, shall refuse or neglect to register, or make such Entry or Entries, or to give such Certificate, being thereunto required by the Author or Proprietor of such Copy or Copies, in the Presence of two or more credible Witnesses, That then such Person and Persons so refusing, Notice being first duly given of such Refusal, by an Advertisement in the *Gazette*, shall have the like Benefit, as if such Entry or Entries, Certificate or Certificates had been duly made and given; and that the Clerks so refusing shall, for any such Offence, forfeit to the Proprietor of such Copy or Copies the Sum of Twenty Pounds, to be recovered in any of her Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoin, Privilege, or Protection, or more than one Imparlayce shall be allowed.

After 25 March,
Archbishop of
Canterbury, &c. to
settle the Prices of
Books, upon Com-
plaint made that
they are unreason-
able.

IV. Provided nevertheless, and it is hereby further enacted by the Authority aforesaid, That if any Bookseller or Booksellers, Printer or Printers, shall, after the said five and twentieth Day of *March* One Thousand Seven Hundred and Ten, set a Price upon, or sell, or expose to Sale, any Book or Books at such a Price or Rate as shall be conceived by any Person or Persons to be too high and unreasonable; it shall and may be lawful for any Person or Persons to make Complaint thereof to the Lord Archbishop of *Canterbury* for the Time being, the Lord Chancellor or Lord Keeper of the Great Seal of *Great Britain* for the Time being, the Lord Bishop of *London* for the Time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the Time being, the Vice-Chancellors of the two Universities for the Time being, in that Part of *Great Britain* called *England*; the Lord President of the Sessions for the Time being, the Lord Justice General for the Time being, the Lord Chief Baron of the *Exchequer* for the Time being, the Rector of the College of *Edinburgh* for the Time being, in that part of *Great Britain* called *Scotland*; who, or any one of them, shall and have hereby full Power and Authority, from Time to Time, to send for, summon, or call before him or them such Bookseller or Booksellers, Printer or Printers, and to examine and enquire of the Reason of the Dearness and Enhancement of the Price or Value of such Book or Books by him or them so sold or exposed to Sale; and if upon such Enquiry and Examination it shall be found, that the Price of such Book or Books is enhanced, or any wise too high or unreasonable, then and in such case the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities, in that Part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that Part of *Great Britain* called *Scotland*, or any one or more of them, so enquiring and examining, have hereby full Power and Authority to reform and redress the

same, and to limit and settle the Price of every such printed Book and Books, from Time to Time, according to the best of their Judgments, and as to them shall seem just and reasonable; and in case of Alteration of the Rate or Price from what was set or demanded by such Bookseller or Booksellers, Printer or Printers, to award and order such Bookseller and Booksellers, Printer and Printers, to pay all the Costs and Charges that the Person or Persons so complaining shall be put unto, by reason of such Complaint, and of the causing such Rate or Price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice Chancellors of the two Universities, in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that Part of *Great Britain* called *Scotland*, or any one of them, by Writing under their Hands and Seals, and thereof publick Notice shall be forthwith given by the said Bookseller or Booksellers, Printer or Printers, by an Advertisement in the *Gazette*; and if any Bookseller or Booksellers, Printer or Printers, shall after such Settlement made of the said Rate and Price, sell or expose to Sale, any Book or Books, at a higher or greater Price than what shall have been so limited and settled as aforesaid, then and in every such Case such Bookseller and Booksellers, Printer and Printers, shall forfeit the Sum of five Pounds for every such Book so by him, her, or them sold or exposed to Sale; one Moiety thereof to the Queen's most Excellent Majesty, her Heirs, and Successors, and the other Moiety to any Person or Persons that shall sue for the same, to be recovered with Costs of Suit, in any of her Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoin, Privilege, or Protection, or more than one Impurance shall be allowed.

V. Provided always, and it is hereby enacted, That nine Copies of each Book or Books, upon the best Paper, that from and after the said Tenth Day of *April*, One Thousand Seven Hundred and Ten shall be printed and published as aforesaid, (2) or reprinted and published with Additions, shall, by the Printer and Printers thereof, be delivered to the Warehouse-keeper of the said Company of Stationers, for the Time being, at the Hall of the said Company, before such Publication made, for the Use of the Royal Library, the Libraries of the Universities of *Oxford* and *Cambridge*, the Libraries of the four Universities in *Scotland*, the Library of *Sion College* in *London*, and the Library commonly called the Library belonging to the Faculty of Advocates at

No. 2.

8 Anne, c. 19.

and if altered from the Price the Bookseller set, may order him to pay Costs to the Party complaining.

Penalty on Booksellers selling at higher Rates

This Clause repealed by 15 G. 2, c. 36.

After 10 April 9 Copies of each Book shall be delivered to the Warehouse-keeper of the Company of Stationers, for the Use of the University Libraries, &c.

(2) It was ruled in the Case of the University of Cambridge v. Bryer, E. 317, that the Right to their Copies attached to all Books published, although the Work be not entered at Stationers' Hall; and notwithstanding that it seems to be taken for granted, in 15 Geo. 3, c. 54, 41 Geo. 3, c. 137, post, that the Provisions only extended to Works so entered. The following Observations, made in that Case, are of great Importance and very general Application. Lord Ellenborough—"Certainly there is some Difficulty in the Construction arising out of these Statutes—but I think the Construction, as it is to be collected from these Acts of the Legislature at subsequent Periods, is not sufficiently strong and cogent to overturn what I understand to be the clear distinct Sense of the Statute of Anne, in which there is nothing ambiguous." Le Blanc, J.—"As the Construction of the Statute of Anne appears to be clear, I am of Opinion, that we ought to abide by it, without being controlled by that Misconstruction of it which in latter Times seemed to have prevailed. I admit the Force of the Observations—but here it is to be remembered, that this is not a positive Interpretation of a former Act imposed by the Legislature in a subsequent Act, but only by the Provisions which the Legislature have made, they seem to have apprehended that such was the Construction of the Statute of Anne."—See Stat. 54 Geo. 3, 156, post.

No. 2.

6 Anne, c. 19.

Warehouse-keeper, to deliver the Books ten Days after Demand. Penalty of Proprietor, &c., not observing the Directions of this Act.

Edinburgh respectively; which said Warehouse-keeper is hereby required, within ten Days after Demand by the Keepers of the respective Libraries, or any Person or Persons by them or any of them authorized to demand the said Copy, to deliver the same for the Use of the aforesaid Libraries; and if any Proprietor, Bookseller, or Printer, or the Warehouse-keeper of the said Company of Stationers, shall not observe the Direction of this Act therein, that then he and they so making Default in not delivering the said printed Copies as aforesaid, shall forfeit, besides the Value of the said printed Copies, the Sum of Five Pounds for every Copy not so delivered, as also the Value of the said printed Copy not so delivered; the same to be recovered by the Queen's Majesty, her Heirs and Successors, and by the Chancellor, Masters, and Scholars of any of the said Universities, and by the President and Fellows of *Sion College*, and the said Faculty of Advocates at *Edinburgh*, with their full Costs respectively.

Penalties in Scotland how recoverable.

VI. Provided always, and be it further enacted, That if any Person or Persons incur the Penalties contained in this Act, in that Part of *Great Britain* called *Scotland*, they shall be recoverable by any Action before the Court of Session there.

This Act not to hinder the Importation, &c. of Books in Greek, &c. printed beyond Sea, &c.

VII. Provided, That nothing in this Act contained do extend, or shall be construed to extend, to prohibit the Importation, vending or selling of any Books in *Greek*, *Latin*, or any other Language printed beyond the Seas; any Thing in this Act contained to the contrary notwithstanding.

General Issue.

VIII. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever, for doing or causing to be done any Thing in pursuance of this Act, the Defendants in such Action may plead the General Issue, and give the special Matter in Evidence; and if upon such Action a Verdict be given for the Defendant, or the Plaintiff become nonsuited or discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a Defendant in any Case by Law hath.

This Act not to prejudice the Right of the Universities.

IX. Provided, That nothing in this Act contained shall extend, or be construed to extend, either to prejudice or confirm any Right that the said Universities, or any of them, or any Person or Persons have, or claim to have, to the printing or reprinting any Book or Copy already printed, or hereafter to be printed.

Actions for Offences against this Act, to be brought in three Months.

X. Provided nevertheless, That all Actions, Suits, Bills, Indictments, or Informations for any Offence that shall be committed against this Act, shall be brought, sued, and commenced within three Months next after such Offence committed, or else the same shall be void and of none Effect.

After the fourteen Years, the Right of Printing, &c. to return to the Author for other fourteen Years.

XI. Provided always, That after the Expiration of the said Term of fourteen Years, the sole Right of printing or disposing of Copies shall return to the Authors thereof, if they are then living, for another Term of fourteen Years. (3.)

(3) No Subject ever excited greater Discussion than the general Question of Literary Property, as founded upon the Principles of the Common Law, and independently of the special Protection afforded by this Statute. Several Injunctions had been granted by Courts of Equity upon the Supposition of a perpetual Copy-right belonging to Authors or their Assigns; but none of the Suits, in which such Injunctions were granted, appear to have been brought to a final Hearing.

The general Question was argued upon a special Verdict in the King's Bench, in the Case of *Tonson v. Collins*, 1 Bl. Rep. 301, 321, by Mr. Wedderburn (afterwards Lord Loughborough) for the Plaintiff, and Mr. Thurlow (afterwards Lord Thurlow) for the Defendant; and upon the second Argument by Mr. Blackstone (afterwards Sir Wm. Blackstone) for the Plaintiff,

No. 2.
8 Anne, c. 19.

and Mr. Yates (afterwards Sir Joseph Yates) for the Defendant, with respect to the Copy-Right in the *Spectator*. The Inclination of the Court was in favour of the Right, and they were prepared to give Judgment accordingly; but having received Information that, although the Argument was conducted *bona fide* by the Counsel, it was a collusive Proceeding between the Parties for the Purpose of obtaining a Judgment which might be set up as a Precedent against third Persons, they refused to pronounce any Decision. The following is an Extract from the Argument of Mr. Thurlow—"It will be difficult to confine this merely to Books, and not to extend it to other Inventions. A learned Author (Bishop Warburton) has endeavoured at it, and brangled it and made sad Stuff of it—he attempts a Distinction between the Labours of the Head and of the Hand; but in some Machines the Labour of the Head is greater than that of the Hand. Sir Isaac Newton had no greater Property in his Principia than Lord Orrery had in his Machine. If the Labour of the Head gives the Right, the Property is just the same; and it is possible that the Invention of the Mouse-Trap cost its Author the same Labour of the Head that the Orrery did its Noble Contriver; so that this Ground of Property depends entirely upon the Difference of Heads."

[3] The Question was again brought before the Court in the Case of *Millar v. Taylor*, 4 Bur. 2303, (with respect to Thomson's Seasons), and occupies above a Hundred Pages of the Volume. Upon this Occasion there was a Difference of Opinion in the Court, being the first Instance of it which had occurred since the Appointment of Lord Mansfield, a Period of between Twelve and Thirteen Years. Lord Mansfield, and Aston and Willes, J. were in favour of the Right, and Sir Joseph Yates against it. The Case may be recommended to Perusal, as forming a peculiarly able Specimen of Judicial Discussion; as containing an interesting historical View of the Subject; and likewise as illustrating several very important Principles of Jurisprudence of general Application.

Judgment was of course given for the Plaintiff, according to the Opinion of the Majority of the Judges; but a few Years afterwards the general Question arose before the House of Lords, in the Case of *Donaldson and Beckett*, when it was finally determined that an Author has no Property in his Copy-Right, otherwise than according to the Terms of the Statute. The Majority of the Judges were of Opinion that there was such a Right at Common Law—seven being of that Opinion, and four of the opposite Opinion; but there was an equal Majority of Opinion, that that Right was restrained, impeached, or taken away by the Statute. Lord Mansfield declined speaking. Lord Camden and the Lord Chancellor (Bathurst) were of Opinion that there was not any Right independently of the Statute. The Answers of the different Judges, with their Reasons, are briefly stated in the *Gentleman's Magazine* for 1775. The Opinion of Lord Chief Justice De Grey is stated rather more at length than the others. This, with the Speech of Lord Camden, I inserted in the View which I published some time ago of the Decisions of Lord Mansfield, thinking, that from their Merit, they were particularly entitled to Attention; and I hoped to have given them a wider Circulation amongst professional Readers than they would otherwise have had, a Hope which has in no Degree been justified by the Event.

[4] Notwithstanding the Determination against the general Question of a perpetual Copy-Right, there are some Subjects in respect of which such Right is still supported, as resulting from the Prerogative of the Crown. These are Bibles, Prayer Books, and Statutes. A Discussion of the Nature and Foundation of this Right will, I am aware, be rather Matter of Curiosity than one of which the Result can be applicable to any practical Purpose; but which, I apprehend, will certainly lead to the Conclusion, that such Right could have had no legitimate Origin upon any Principles of the Common Law at present acknowledged. The preceding Number of this Class exhibits a View of the Law, at the Time of its passing, with respect to the great Extent of the Prerogative exercised by the Crown in the granting Patents for Monopoly. Upon the Restriction of that Right, with respect to other Subjects, an Exception was made of the Case of Printing, as to which Patents were left so be of the like Force and Effect as if the Act had never been made; but it will not be contended that, by Force of this Reservation, the Crown has now the

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Prerogative of granting an unlimited and exclusive Right, with respect to any Publication or kind of Publication selected at pleasure. The Power formerly assumed upon this Subject was carried to a very extravagant Length Indeed. Sir Joseph Yates, in delivering his Opinion in the Case of Millar v. Taylor, observed, that "different Patents, which had been cited from Ames's Typographical Antiquities, were two gross to be mentioned, but they excluded all Idea of Proprietary Right;" amongst them were Patents for all Maps and Charts of England, the Printing of Music, all Things printed on one Side of a Sheet of Paper, or any Part of a Sheet, provided the other Side was white Paper. He also traced the Manner in which the Subject was affected by the Connection between the Star Chamber and the Stationers' Company, and noticed the Effect of the Licensing Acts. He observed, that all the Patents were enormous Stretches of the Prerogative to raise a Revenue, and to gratify particular Favourites, without the least Regard to Authors and new Compositions. The rest of the Authorities cited were founded on political Views to prevent, as they declare, heretical and seditious Publications; and the Order of the Star Chamber, that all Books should be entered in the Register of the Stationers' Company, was to prevent improper Publications. The Innocence or Delinquency of the Book, and not any private Property in the Authors, were the Objects of Inquiry. Speaking of the Nature of prerogative Copies, he said, "The Right of the Crown to the sole and exclusive Printing of what is called prerogative Copies, is founded on Reasons of Religion or State. The only Consequences to which they lead are of a national and public Concern, respecting the established Religion or Government of the Kingdom, and bear no Analogy to the Case of private Authors.—Lord Mansfield considered the Existence of prerogative Copies as merely a Modification of the general and common Right of Literary Property; and from the Cases which had been decided in favour of these particular Copies he inferred, as a necessary Consequence, the Existence of the general Right. In the Course of his Judgment he discussed at length the Position that Crown Copies were founded solely on Property, and said, that in *Basket's Case*, (*Basket v. the University of Cambridge*, 1 Bl. 105, 2 Bur. 661, as to the Right of printing Acts of Parliament,) they had no Notion of the Prerogative of the Crown over the Press, or of any Power to restrain it by exclusive Privileges, or of any Power to controul the Subject Matter upon which a Man might write, or the Manner in which he might treat of it. They rested upon Property from the King's Right of original Publication. The Copy of the Hebrew Bible, the Greek Testament, or the Septuagint, does not belong to the King—it is common—but the English Translation he bought, and therefore it has been concluded to be his Property. His Power rests in Property." His whole Right rests on the Foundation of Property in the Copy by the Common Law. What other Ground can there be for the King's having a Property in the Latin Grammar, which is one of his ancientest Copies, than that it was originally composed at his Expence?—Whatever the Common Law says of Property in the King's Case from Analogy to the Case of Authors must hold conclusively in my Apprehension with respect to Authors.—From the Manner in which this very eminent Judge treats the Case of prerogative Copies, as identified with the general Law of Copy-Right, it would seem manifest that, after the latter had been negatived by the Resolution of the House of Lords, he must (if acting consistently) have held that the Non-Existence of the former was as a necessary Consequence involved in the Decision. Lord Chief Justice De Grey, upon this Part of the Subject, said "What is Common Law now must have been so Three Hundred Years ago when Printing was invented: no traces of such a Claim (speaking of Literary Property in general) are to be met with prior to the Restoration—very few Cases of this kind happened in Charles the Second's Time, or before the Licensing Act, and those few were determined upon the prerogative Right of the Crown. The executive Power of the Crown drew after it this prerogative Right which extended to all Acts of Parliament, Matters of Religion, and also of State. The Case of *Basket* and the University of Cambridge, which was a late Case of the kind, appeared upon the Readings to be a Question arising between two Parties who claimed under concurrent and inconsistent Grants of the Crown. My late honourable and learned Friend, Mr. York, who argued that Case, endeavoured to shew that his Client's Right might arise from the Power of the Crown; and, to illustrate his Argument, said it might perhaps be Property founded in Prerogative; a Language, however allowable for Counsel,

not admissible "by or intelligible to a Judge." The following are Lord Camden's Observations, in alluding to that Part of the Argument for the general Right which was founded upon the Existence of prerogative Copies—"I come now to consider on what Foundation stand the prerogative Copies, and these were in fact Cases between Co-Patentees, (for I must consider the Stationers' Company itself as a Patentee of the Crown), and so authorship Right occurs here. The Right in the Crown is supposed to proceed either from Purchase or Contract, and our Law argues from Principles, Cases, and Analogy; but not a Word of this in the Judgment of the Court, but the Arguments of Counsel are adduced to prove the Point. The Argument of Counsel is a sorry kind of Evidence indeed; in most Cases it would be dangerous to rely on it, but here it is such Stuff as I am ashamed to mention. You have them at Length in Carter's Reports. First, it is put on the Topic of Prerogative, then of Ownership—1 Henry VI. brought over the Printers and their Presses; ergo, say the Counsel, he has an absolute Right to the whole Art, and all that it can produce. 2nd. Printing belongs to Nobody, and what belongs to Nobody is of course the King's. 3rd. The King pays his Judges, ergo he Purchases that Right for a valuable Consideration. 4th. He paid for the Translation of the Bible, therefore forsooth he bought a Right to sell Bibles. Away with such trifling.

[5] Such were the Views which were taken upon this Part of the Subject on discussing the important general Question of Literary Property; and it seems almost impossible to doubt that if, recently after the final Decision of that Question, and before the modern Invention of Acts of Parliament lost by Time or Accident, the Bull had been fairly taken by the Horns, and the Question of prerogative Copies boldly and openly met, the great Men whose Opinions have been cited would have held, that there was no Foundation of legal Right in such a Claim. It might be reasonably urged, that any Part of the Law not founded on immemorial Usage, or deduced from the general Nature of the Subject, could only proceed from legislative Authority, and that the Assumption of any such Right was wholly without the Province of either of the executive or judicial Powers—no Right, as founded upon the Nature of the Thing, could be applied to the Case of Prerogative, which would not as fully have supported the exploded Right of general Literary Property. But for a considerable Time after the Introduction of the Art of Printing, to have challenged a Right which the Advisers of the Crown had thought proper to assert, would not have been safe in an Individual, much less would the giving Countenance to such a Challenge have been prudent in a Judge. After the Revolution and Act of Settlement had placed upon their proper footing, the Rights of the Subject and the Independence of the Judges, the Prerogative which had been before assumed was acquiesced in without taking the trouble of questioning the Legitimacy of its Origin, or the Soundness of its Foundation. The rival Claimants to the Benefit of the supposed prerogative Right were of course not very likely to urge an Objection which would strike at the Root of their own asserted Property; but however unstable such Property might have been, if it had been attacked in a proper Manner, and at the proper Time, and notwithstanding it is regarded as a Maxim of the Law, that *Quod ab initio non valet tractu temporis non convalescit*; I think it is very manifest that the Question could not now be agitated with any Prospect of Success.

[6] The Right to the exclusive printing of Almanacks continued to be insisted upon by the Universities and Stationers' Company, as Matter of Prerogative, after the final Decision of the general Question of Literary Property. The Origin of this Property is, in 1 Mod. 956, put upon the following curious Reasons:—Property in Almanacks are said to be, the King's, 1st. because denelict; 2ndly. as Prerogative Copies, because they regulate the Feasts of the Church. Mr. Carnan, a Bookseller, had the Spirit to resist this absurd and ridiculous Claim, and obtained a Decision of the Common Pleas in his favour upon a Case sent from the Court of Exchequer upon a Bill for an Injunction. Soon after the Decision, Lord North (then Prime Minister, and Chancellor of the University of Oxford), brought a Bill into Parliament for giving to the Stationers' Company and the Universities the Right, the previous Existence of which had been judicially negatived, under the fallacious Title of a Bill to reverse the Monopoly in these Bodies.

Mr. Carnan was admitted to be heard by Counsel against the Bill; Mr. Erskine, who had then recently entered upon his splendid Career of Eloquence,

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8 Anne, c. 19.

was the Counsel resorted to, and his Address upon that Occasion is the second in order of Date in the valuable Collection of his Speeches lately printed, and is well entitled to Attention, both from the Justness of its Reasoning, and the manly constitutional Freedom of its Principles.

[7] The prerogative Right, with respect to Bibles and Prayer Books in favour of the Universities and the King's Printer, is the Subject to which I shall now more particularly refer, and which has been regarded in a very different Manner by the late Lord Clare as Chancellor of Ireland and the Court of Chancery, followed by the Decision of the House of Lords in England. Upon Application for an Injunction from printing an Edition of the Bible in Numbers with Prints and Notes, Lord Clare asked, if the Validity of the Patent had ever been established at Law, and said he did not know that the Crown had a Right to grant a Monopoly of that kind. In the Course of the Discussion he made the following Observations—"I can conceive that the King, as Head of the Church, may say, that there shall be but one Man who shall print Bibles and Books of Common Prayer for the Use of Churches and other particular Purposes; but I cannot conceive that the King has any Prerogative to grant a Monopoly as to Bibles for the Instruction of Mankind in the revealed Religion, if he had, it would be in the Power of the Patentee to put what Price he pleased upon the Book, and thus prevent the Instruction of Men in the Christian Religion." "If ever there was a Time which called aloud for the Dissemination of religious Knowledge it is this, and, therefore, I should with great Reluctance decide in favour of such a Monopoly as this, which must necessarily confine the Circulation of the Book." "As to very particular Purposes, I have no doubt that the Patentee has an exclusive Right to print Bibles and Prayer Books; but, unless I am bound down very strictly, I will not determine upon Motion that no Man but the King's Printer has a Right to print such Works as these."

"In giving Judgment, he said, that the Case, which had been mentioned, seemed to intimate that it never had been solemnly decided how far the Prerogative extends to give a sole and exclusive Right of printing Bibles. Many of the old Cases upon the Subject were determined upon the Principle of the Licensing Act," and the Motion was refused,—*Grierson v. Jackson*, *Ridgways Rep.* 304.

[8] A very different View was taken of the Subject, seven Years afterwards, in the Case of the Universities of Oxford and Cambridge v. Richardson, 6 Vesey, 689; in which an Injunction against the King's Printer in Scotland, who had a Patent for the Sale of Bibles, printing or selling them in England, was granted upon Motion and before the Hearing, upon the Ground that Possession, under Colour of Title, was sufficient to injoin and to continue the Injunction till it was proved at Law, that it was only Colour and not real Title, a Doctrine which I have adverted to in the Note on the preceding Number with respect to Patents, and shall again have Occasion to mention. In the Course of this Case it appeared, that, in the Year 1718, Sir Joseph Jekyll, as Master of the Rolls, had granted an Injunction in a similar Case, which was supported upon Appeal before the Lord Chancellor; and also, that a Decree of the Court of Session had, in the Year 1717, been reversed by the House of Lords in favour of the Right of the King's Printer in England, confining the Right of the Scotch Printer to Scotland. With respect to the Precedent of the Injunction it is clear, that there had been Abundance of Injunctions before upon private Copy Right, until the Claim was finally put an end to by the Decree of the Lords; and Questions between rival Patentees, are not the most probable Method of bringing into fair Discussion the general Rights of the Subject to resist the Claim of Prerogative, Root and Branch. The Lord Chancellor, in his Judgment, said, "My Opinion is, that the public Interest may be looked to upon a Subject, the Communication of which to the Public, in an authentic Shape of a Matter of Right, is also a Matter of Duty in the Crown, which are commensurate." It is not accurate to say, these Privileges are not granted for the sake of unqualified Sale, and for the Sale of the Universities, &c. They are, to a certain Degree, like all other Offices, calculated for that sort of Advantage which will secure to the Public the due Execution of the Duty; upon this Principle proceeds all the Branches of our Constitution, (which does not adopt the wild Theories that require the Execution of a Duty without a due Compensation), that the Duty is well secured in one way by giving a Responsibility, in point of Means, to the Person to execute it. The Reasoning

which affects to depreciate Monopoly will perhaps tend to create it." There certainly is no great Risk that false Copies of the Bible would get into general Circulation by an unlimited Right of printing them. We do not find it materially the Case in other Works; and there are, I conceive, very few Persons indeed who would admit that the beneficial Circulation of any Commodity in general, or of these Writings in particular, can be promoted by Means of an exclusive Monopoly; and the principal Object, both of the Right and the Duty, with respect to the particular Subject, appears to be the Benefit arising to the privileged Individuals.*

[9] The Question was afterwards brought before the House of Lords, and the Injunction against the Scottish Printer confirmed. I observed, in the Account of the Proceedings which appeared at the Time in the public Prints, that one Part of the Argument of the Counsel for the Defendant was proceeding to question the general Right of the Plaintiffs, which was stopped by an Intimation that the Case of their Clients did not consist in disputing the Right of the Plaintiffs, but in asserting a peculiar Right consistent with it in themselves. This Hint would of course have its due Effect in silencing the Counsel upon a Topic in which, if they had been successful, they would have cut their own Clients' Throats. And thus, I apprehend, that the Law upon the Question will be held to have been finally settled against the common Liberty of the Subject by this Decree between the rival Printers deriving their Title from the very questionable Prerogative of the Crown.

The exclusive Right of printing Acts of Parliament and other Matters of State has been looked upon more favourably than the other Branches of the Prerogative in Question. Lord Clare, in the Case of *Grierson v. Jackson*, said, he could very well conceive that the King should have a Power to grant a Patent to print the Statute Books, because it was necessary that there should be a Responsibility for correct Printing, and because the Copy can only be had from the Rolls of Parliament which are within the Authority of the Crown; and Mr. Erskine, in his Speech already alluded to, admits the Right in the strongest Terms. Notwithstanding the Argument *ad verecundiam*, which may be so strongly urged upon the Subject, I am by no means satisfied, that the legal Right in this respect, considered with Relation to its Origin, rests upon any juster Principles than the exploded Rights respecting the Latin Grammar and Almanacks. Previous to the Invention of Printing, the usual Course was to send the Statutes to be proclaimed by the Sheriffs; then, as now, every Subject was bound to have taken Notice of the Contents of them at his peril; and there is not the slightest Trace of an Authority for a Restriction of the Employment of making Manuscript Copies, which, to the Lawyers and Judges of that Day, must have been essentially necessary, although, in case of any Question arising judicially with respect to the Contents of a Statute, the original Record, or some duly authenticated Copy, would of course be resorted to; and I cannot discern any legal Principle upon which a Discovery, that had the Effect of facilitating the Multiplication of Copies, could limit and restrain that common Right of producing such Copies which previously existed. In fact this Authority, originally claimed by the Crown, had no particular Relation to the Benefit of affording to the Public a more accurate Information upon the Ordinances of Parliament than could otherwise have been obtained, but was merely one amongst many other Instances of the Application of that general overwhelming System of Monopoly, which is now reduced to very circumscribed Limits, and supported only upon Grounds and Principles that in former Times were never thought of.

[10] Although there is no Reason to complain of the Individuals in which the exclusive Right is now vested, I think it evident that an exclusive Right of promulgating Statutes is in its Nature much more calculated to retard than to promote a general Diffusion of the Knowledge of the Laws, as there is no other Tie than that of mere Prudence against the publishing these Acts, which are of general Utility, in Conjunction only with many others that would be totally useless, and of including in the Collection every Turnpike and Canal Act that has been ever passed. The Magnitude of the Collection, which is actually published, is a very serious Object in respect of Expence to a Person newly entering on the Practice of the Profession, and to Gentlemen acting in

* See some important Observations upon the Difference between a Free Press and a Monopoly in Erskine's Speech for Curran.

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the Commission of the Peace, and the great Disproportion in modern Legislation between the total Bulk of the Statutes and the Number of those which have Relation to the general Knowledge and Practice of the Law is felt by the Profession, and not unfrequently complained of from the Bench as a serious Inconvenience. In the Attempt which is made in the present Work to remedy that Inconvenience, I had originally conceived that the Selection and Arrangement, which are the principal Features of the Work, might have been deemed sufficient to protect the Attempt from the Imputation of invading the Right, which it would be unavailing to dispute; and to that Selection and Arrangement the Plan of the Work was originally confined; but, upon further Consideration, I did not feel bold enough to encounter the Risque with which such an Attempt would have been attended, and being strongly impressed with the Conviction that the Undertaking, if fairly executed, would be productive of considerable Utility, I have devoted much Time and Attention to the Formation of the numerous Notes which now accompany it, and which I hope will have the Effect, not only of supporting its Legality, but of increasing its Utility, although the Preparation of them has very considerably retarded its Appearance.

If any Apology should be thought necessary for the Length of a Discussion which will probably be considered immaterial, as affecting its immediate Objects, and as applying the Test of Argument to a Question which may be probably concluded by Authority, that Apology will, I hope, be found in the Importance of some of the Principles with which the Discussion is connected, and a steady Attention to which, in respect of Questions still within the Reach of Argument, is essentially conducive to the Preservation of some of the highest Excellencies in the Law and Constitution of the Country.

[11] It seems to have been agreed, that the privileged Copies may be printed by others than those having the Patent Right, if accompanied by *bona fide* Notes. In the Case of *Baskett v. Cunningham*, 1 Bl. Rep. 370, the Defendant, in Conjunction with several Booksellers, was publishing, in weekly Numbers, a Digest of the Statute Law, methodized under alphabetical Heads, with large Notes from Lord Coke and other Writers on the Law. He had contracted with Strahan and Woodfall, the Proprietors of the Patent for printing Law Books, to print this Work, and it was printed at their Press. Baskett, the King's Printer, (whose Patent extended to all Statutes,) filed a Bill for an Injunction. It was urged, that the Book was not within the Meaning of the Letters Patent, being a Work of Labour and Industry, and the Method entirely new; and the Lord Chancellor was of Opinion, that the Work was entirely within the Patent of the King's Printer, and that the Notes were merely collusive. But he would not interfere between the two contending Patents, in the summary Method of Injunction, but left them to adjust their respective Rights in the Course of Law. He therefore ordered an Injunction to issue to restrain the Proprietors from printing at any other than a Patent Press, which, as Woodfall and Strahan were secretly in League with Baskett, and were at that Time jointly concerned in a new Edition of the Statutes, was equivalent to a total Injunction, the Law Printers finding Means to elude their Contract with Cunningham.

In what respect the Notes in that Case were collusive does not appear; but, according to the present State of the Law, a general Patent for printing Law Books would be only laughed at. There seems to be very little Reason to suppose, that a Digest of the Substance and Effect of the Statute Law would be considered, by any Tribunal, as the Subject of a legal Monopoly. Mr. Reeves, one of the Royal Patentees, and the Writer of several learned juridical Publications, in the Preface to his Edition of the Bible, (divided into Sections,) observes, that all the authorized Bibles published by the King's Printer and the Universities are wholly without explanatory Notes. These privileged Persons have confined themselves to printing the bare Text, in which they have an exclusive Right, forbearing to publish it with Notes, which it is deemed may be done by any of the King's Subjects as well as themselves. He subjoins to this Passage a Note in the following Terms:—"I mean such Notes as are and are intended for Annotations, not the Presence of Notes which I have seen in some Editions of the Bible and Common Prayer Book, placed there merely as a Cover to the Piracy of Printing upon the Patentees, as if Fraud could make legal any Thing that was in itself illegal. In some of these Editions the Notes are placed purposely to be cut off by the Binder."

The Admission of Mr. Reeves, considering his legal Knowledge, his Interest in the Subject, and the Turn of his political Opinions on the Subject of Prerogative, seem sufficient Authority for the general Right of the Subject, with respect to the Publication of the privileged Copies having the Acceptment of *bona fide* Notes.

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The Writers of legal Publications on any detached Subject, as the Bankrupt Laws, the Poor Laws, the Game Laws, have never been molested since the Time of the great Discussion upon the Subject of Copyright, in printing at large the Statutes applicable to these respective Subjects.

[12] "Soon after the Restoration, an Act of Parliament having prohibited the printing of Law Books without the Licence of the Lord Chancellor, the two Chief Justices, and the Chief Baron, it became the Practice to prefix such a Licence to all Reports published after that Period, in which it was usual for the Rest of the Judges to concur, and to add to the Imprimatur a Testimonial of the great Judgment and Learning of the Author. The Act was renewed from Time to Time, but finally expired in the Reign of King William. But the same Form of Licence and Testimonial continued in Use until not many Years ago, when, as the one had become unnecessary, and the other only a general Commendation of the Writer, and no Voucher for the Merit of the Work, the Judges (I believe) came to a Resolution not to grant them any longer, and accordingly the more recent Reports have appeared without them.—Preface to Douglas's Reports. Sir James Burrow offers an Apology for publishing his Reports without an Imprimatur, and says he knows it is a Contempt of that Court to publish their Proceedings, and that it is against a standing Order of the House of Lords to publish Proceedings there, upon Appeals or Writs of Error. He also adverts to the Origin and Continuance of the Imprimatur, in the same Manner as it is stated by Mr. Douglas—and adds, that he has been assured that some, who were possessed of judicial Offices, had declared that they would never sign one, because it hangs out false Colours.

The Idea of such Publication being a Contempt of Court would probably give some Assistance to the unfounded Claim of a Patent Right for the exclusive printing of Law Books, since, as long as such Patents were granted, and the Validity of them not contradicted by any judicial Determination, the Necessity of the Licence might come in Aid of the Monopoly. I have met with an Instance, which I cannot particularly refer to, of one of the Courts disapproving the Citation of a Case from Modern Reports, not on the Ground of their Inaccuracy, but because they had been published without the Authority of the Judges. The Prohibition by the House of Lords to publish the Reports of their Decisions, (at the same Time taking no Care to furnish any authentic Information upon the Subject themselves,) seems founded upon very extraordinary Policy, as keeping the Public in Ignorance of those Adjudications by which they are most peculiarly bound; but this Ground of Contempt has long ceased to be the Object of their Animadversion, and Brown's Parliamentary Cases, with the recent Reports of Mr. Dow, are suffered to pass as unmolested as the diurnal Accounts of the Debates in Parliament. Indeed, I apprehend that the general Monopoly of such Publications would not be of sufficient pecuniary Value to form a very probable Subject of Litigation; and the practical Application of the Doctrine of Contempt has been much relaxed since about the Commencement of the present Reign, when the Mention, in Print, of the Name of a Peer, upon any accidental Subject, (for instance, that of his Fish Ponds had been robbed, which I have heard stated, as a Case that appears in Print, to have really occurred,) was taken up as a Contempt of the House. The ridiculous Extent to which this Practice was carried by the late Lord Marchmont, was probably the Reason of its falling into Disuse.

[13] But a Remnant of this Practice still prevails, where the temporary Interest of the Subject Matter would lead to a Competition of Publication, and a Monopoly may be attended with some Advantage; the Case of Trial by Impeachment or otherwise, before the House of Lords: and the Right of exclusive Publication in the Person printing under the Authority of the House, has been supported to a certain Extent, as one not having solely the summary Protection of that Assembly as a Subject of Contempt, but as giving a Property intitled to Protection in the ordinary Course of Law. Lord Bathurst having, in a Case of Bathurst v. Kearsley, granted an Injunction in favor of the Printer under his Authority of the Trial of the Duchess of Kingston;

No. 2. Lord Eldon, upon the Precedent of that Decision, ordered an Injunction
8 Ambl. c. 19 with the Hearing, in the Case of *Gurney v. Longman*, 13 Vesey, 493,
 with respect to the Trial of Lord Mansfield, at the same Time intimating that, unless he had a strong Impression at the Hearing, he should continue of the same Opinion; and should grant a perpetual Injunction, he would not grant an Injunction then; but on the Day of his quitting Office as Lord Chancellor, he desired that it should be understood that he had not delivered any Judgment further than by granting the Injunction until the hearing upon the Precedent of the former Case of *Bathurst v. Keasley*, and should therefore consider the Question as open in any future Stage. A Demurrer was afterwards put in, but was never argued; a Compromise taking place. The Argument of Counsel upon this Case, throws a considerable Light upon the general Subject. The Counsel for the Defendant admit that Right of Monopoly in prerogative Copies, with respect to which I have manifested so strong an Impression as authorizing against some important legal Principles, has this Admission which did not immediately affect the Interest of their Client, leaves the general Argument upon the Subject, to stand on its original Merits.

[14] The Court of Chancery also exercises an Authority with respect to restraining the Publication from Manuscripts of Persons deceased. In the Case of the Duke of Queensbury v. Shebbeare, before Lord Hardwicke, as cited by Willes, *11 Millar v. Taylor*, & *Borr*, 2089, an Injunction was granted against Printing the Second Part of Lord Clarendon's History. Lord Clarendon, they say, let Mr. Francis Gwynn in 1684, a Copy. His Son and Representative insisted he had a Right to print and publish. The Court were of Opinion, that Mr. Francis Gwynn might make every Use of it, except the Profit of multiplying in Print. It was to be presumed (as Willes, J. observed) that Lord Clarendon never intended that, when he gave him the Copy. The Injunction was acquiesced under, and Mr. Shebbeare recovered, before Lord Mansfield, a large Sum against Mr. Gwynn, for representing that he had a Right to print. Mr. Justice Willes adduced this Case, as an Argument for the general Right of Literary Property, in which he is followed by Lord Mansfield, who observes, that Mr. Gwynn was entitled, undoubtedly to the Paper of the Transcript of Lord Clarendon's History, which gave him the power to print and publish it; After the Fire at Finsbury, which destroyed the original. But at the Distance of near a Hundred Years, the Copy was adjudged the Property of Lord Clarendon's Representatives, and Mr. Gwynn's printing and publishing it, without their Consent, was adjudged an Injury to that Property, for which in different Shapes he paid very dear; and after recollecting the Case of Pope and Curll respecting the Publication of Letters, which will be presently referred to, Lord Mansfield puts a String of Questions, tending to show, that all the Objections which had been urged against a general and unlimited Copy-right after Publication, would equally apply to the Case of an unpublished Manuscript; as whether the Right to prohibit the Publication, was Real or Personal, whether it was assignable, whether it could be taken to Execution? could it be vested in the Assignees of Bankrupts? evidently intimating that the two Cases stood upon an equal Footing, and that if the one was negatived, there was no legal Foundation for the other. In the Review of the Decisions of this eminent Judge already alluded to, it occurred to me to observe, that a full Consideration of the Consequences of these Questions might perhaps lead to a different Conclusion, with respect to unpublished Manuscripts, from that which is the Foundation of several Decisions in Chancery. During the Life of a Writer the Publication may be deemed a personal Injury, but after his Death, several material Questions may arise with respect to the Claim of his Representatives. It is necessary to observe, in *Millar and Taylor*, that the Injunctions were founded upon legal Property. An Executor can only bring an Action at the Claim for legal Property, which requires the Assent, and to the extent of which Assent he is accountable. But the Right to prevent any Person besides the Representatives of the deceased, from publishing it, is no Property which can be brought in the Name of the Assent, in respect of which Assent, he represents the deceased. The same Observation will, in some Degree, apply to the Heir. Besides which, this Kind of Property is no wise analogous to any Hereditament recognized by the Law. The Interposition appears to be on Behalf of the Family of the Writer. But it seems a legal Anomaly to take Notice of the Family of a deceased Person, in any other Manner than as connected with the

Property, which constitutes Real or Personal Assets. If ever the Question should come solemnly before a Court, great Respect would be due to the illustrious Characters, whose Decisions were impeached; but if the Object of the Suit appeared upon Examination, to be destitute of legal Principle and Analogy, the Authority of those Decisions would probably give way. Lord Mansfield, to support the perpetual Right to Works published, argues, that an unpublished Manuscript cannot be distinguished from them; and may not that Argument now be applied to the ultimate Decision of the House of Lords, against a perpetual Common Law Right of Publications, and extended to Manuscripts?

I do not very well understand upon what Principle the Action could have been supported against Mr. Gwynn, unless he had expressly represented to Dr. Shebicare, that he had an actual Consent to publish the MS. for if the Purchase was made generally, the Seller could not be deemed to warrant the Enjoyment of it in a particular Manner, against the mere common Course and Operation of the Law, as then understood and administered.

[15] The Court of Chancery interposed in the Cases of Mr. Webb and Mr. Forrester, cited Ambler, 695, the former of whom had his *Precedents of Conveyancing* stolen out of his Chambers and printed; and the latter had his Notes copied by a Clerk to the Gentleman to whom he had lent the Notes, and which were printed, and the Parties were restrained by Injunction from printing and publishing them. In *Macklin v. Richardson*, Ambler, ib. the Defendant had employed a Short-hand Writer to take down the Farce of *Love à la Mode* upon its Performance at the Theatre, and inserted one Act in a Magazine, and gave Notice that the second Act would be published in the Magazine of the following Month. Upon an Application to Lord Camden for an Injunction, he directed the Case to stand over until that of Millar and Taylor, which was then depending, should be determined; and, after the Determination, the Injunction was by the Lords Commissioners, Smythe and Bathurst, made perpetual. Smythe, L. C. said, it has been argued to be a Publication by being acted, and therefore the Printing is no Injury to the Plaintiff, but that is a mistake; for, besides the Advantage of the Performance, the Author has another Source of Profit from the Printing and Publishing, and there is as much reason that he should be protected in that Right as any other Author. Bathurst—"The printing it before the Author is doing him a great Injury." It does not distinctly appear whether this Decision was influenced by the Opinion of the general Right of Literary Property having been settled by the Decision in *Millar and Taylor*, or whether the restraining the Publication of the Farce, not then published by the Author, was upon the Ground of a distinct and independent Equity, applicable only to Publications not printed. In *Coleman v. Watken*, 5 T. R. 245, it was determined that an Action at Law cannot be maintained for representing on the Stage the Production of another Person as not being a publishing within the Statute.

[16] In *Pope v. Curl*, 2 Atk. 541, Lord Hardwicke supported an Injunction by Pope against the Defendant's vending a Book intitled *Letters from Swift, Pope, and others*. His Lordship observed, that the first Question was, whether Letters were within the Grounds and Intention of the Statute, 8 Anne, and said, he thought it would be extremely mischievous to make a Distinction between a Book of Letters which came out into the World, either by the Permission of the Writer, or the Receiver of them, and any other learned Work. The same Objection would hold against Sermons which the Author may never intend should be published, but are obtained from loose Papers, and brought out after his Death. Another Objection has been made, that when a Man writes a Letter, it is in the Nature of a Gift to the Receiver; but I am of Opinion that it is only a special Property in the Receiver, possibly the Property in the Paper may belong to him, but this does not give a License to any Person whatsoever to publish them to the World, for at most the Receiver has only a joint Property with the Writer. It is observable, that this Case professes to proceed strictly upon the Statute, which gives only a Right for fourteen Years from the Day of first Publishing, and supposing there to be a joint Property in Letters of Correspondence between the Sender and Receiver, it does not seem by any means necessary to follow that one of several joint Owners may not exercise the Right of Publication. Supposing different Persons to be possessed of Manuscript Copies of a given Composition, in which no other has a para-

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mount Claim to restrain the Publication, it cannot be supposed that any of them individually could prevent the Publication by the others.

[17] In *Thompson v. Stanhope, Ambler, 737*, it appears that the Executors of Lord Chesterfield obtained an Injunction till the Hearing against the Widow of Mr. Stanhope, with respect to the Publication of his Lordship's Letters to her Husband, and of Characters of different Persons, the Originals of which Characters she had delivered to Lord Chesterfield, who said he meant to burn or destroy them, and, upon her offering to give up the Letters, declined taking or looking at them. Lord Apsley, according to the Report, recommended it to the Executors to permit the Publication in case they saw no Objection to the Work upon reading it and having Copies delivered to them. In 2 V. & B. 21, it is said, that by the Register's Book it does not appear that an Injunction was actually granted. It is well known that the Publication did appear, but, whether upon the Judgment of the Executors that they saw no Objection to the Work, or upon what other Ground we are not informed.

In the late Case of the *Earl of Gramond v. Dunkin, 1 Ball and Beattie, 207*, the Executors of Lady Tyrawley obtained an Injunction in the first Instance against the Defendant publishing Letters to Lady Tyrawley from different Correspondents, and which he had got possession of by being permitted to reside in her House, and continuing to do so after her death.

The last Case upon the Subject is *Lord and Lady Percival v. Phipps and Mitford, 2 V. & B. 19*. The Bill stated, that Lady Percival had written to Mitford several Letters of a private Nature, in confidence that he would not part with them, nor publish, or permit them to be published, but that he had communicated them to Phipps who had published one, and announced an Intention to publish others, and prayed an Injunction. Phipps by his answer stated, that he had published in a Newspaper certain Intelligence as communicated to him by Lady Percival for that Purpose, and disavowed by her, and that the Letters in question were written to Mitford upon similar Subjects, materially tending to shew that the Intelligence did come from Lady Percival, and that, as she had denied being privy to the former Publication, the Character of Phipps and the Value of his Paper were in danger of falling into discredit with the Public. The Vice-Chancellor dissolved the Injunction leaving the Plaintiffs to do what they could at Law.

In the View which he took of the Subject he observed, that this Equity stands not upon Breach of Confidence, or the Injury to the Feelings of the Parties, but upon this broad Basis, the Invasion of Literary Property. The following Passage from the Judgment is very material:—

“This is the naked Case of a Bill, certainly, to prevent the Publication of private Letters; not stating the Nature, Subject, or Occasion of them, or that that they were intended to be sold as a Literary Work for Profit; or are of any Value to the Plaintiff. Upon such a Case it is not necessary to determine the general Question, how far a Court of Equity will interpose to protect the Interest of the Author of private Letters. The Interposition of the Court in this Instance certainly is not a Consequence from the Cases that were cited; upon which I shall merely observe, that, though the Form of familiar Letters might not prevent their approaching the Character of Literary Work, every private Letter, upon any Subject, to any Person, is not to be described as a Literary Work, to be protected upon the Principle of Copy-Right. The ordinary Use of Correspondence by Letters is to carry on the Intercourse of Life between Persons at a Distance from each other, in the Prosecution of commercial, or other Business; which it would be very extraordinary to describe as a Literary Work, in which the Writers have a Copy-Right. Another Class is the Correspondence between Friends or Relations, upon their private Concerns; and it is not necessary here to determine, how far such Letters, falling into the Hands of Executors, Assignees of Bankrupts, &c. could be made public in a Way, that must frequently be very injurious to the Feelings of Individuals. I do not mean to say, that would afford a Ground for a Court of Equity to interpose to prevent a Breach of that Sort of Confidence, independent of Contract and Property.”

[18] A Case was mentioned as having recently occurred of an Injunction restraining the Publication of Letters from an old Lady under the Influence of a weak Attachment to a young Man. The Case had been heard privately before the Lord Chancellor; but the Defendant in that Case, as stated by the

Vice-Chancellor' in his Judgment, had received a Sum of Money not to publish the Letters, and the Attempt to publish them was therefore a Violation of Contract.

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8 Anne, c. 19.

With respect to these private Hearings it has lately been declared, in Allusion to some Commentaries in the public Prints, that they never take place but at the Request of both Parties. I am very far from being clear that this Circumstance renders them entirely unobjectionable, because it is of great Importance that Decisions which, as Matter of Precedent, are to give the Law to the Country at large, should be promulgated in such a Manner that they may be generally known and acted upon, and not kept up as a Kind of Pocket-Pistol Law, ready to be let off as may happen to suit the Purposes of the few Individuals who, from the accidental Connection with a particular Case, may happen to get Possession of it.

[19] In *Hogg v. Kirby*, 8 Vesey, 215, an Injunction was granted against the Defendant from publishing a Number of a Magazine, which was so printed as to appear a Continuation of a Work published by the Plaintiff, and from selling, &c. any other Work or Publication as or being a Continuation of the Plaintiff's Work, or of the Defendant's Work, which had been published as such Continuation. The Case was partly argued upon the Ground of a Breach of Contract by the Defendant, who had been the original Publisher of the Work of the Plaintiff; but the Court seemed to admit the general Principle, that a Person cannot publish a Work professing to be and handed out to the World as the Continuation of a Work published by another. It was said, in Argument, to have been determined, that Property exists in a Newspaper, and that an Action lies for publishing under the same Title.

[20] With respect to Subjects more immediately depending upon the Statute, and not referred to in the preceding Part of the Note, it was decided in *Bach v. Longman*, Cowp. 623, that the Protection extends to musical Compositions by force of the Words *Books and other Writings*: "It is not," said Lord Mansfield, "confined to Language or Letters—Music is a Science, it may be written, and the Mode of arranging the Ideas is by Signs and Marks, and the Right may subsist as to a single Sheet of Music"—*Clement v. Goulding*, 11 East, 244, and Cases there cited; and it seems that the Words of a Song applied to an old Tune, and published with it on a single Sheet of Paper, are privileged as a Book—*Hime v. Dale*, 2 Campb. 29 n. and in *Stonice v. Longman*, 2 Campb. 27 n. Lord Kenyon held, that the Right of the Author was not divested, by shewing that the Song was written to be sung at the Opera, and that all Compositions so performed were the Property of the House, not of the Composer; but, Query, as to the Accuracy of this Opinion, as nothing is more usual than for an Author to dispose of MS. and Copy-Right, and a general Usage and Understanding upon the Subject may be Evidence of such a Disposition.

[21] It is often a Matter of Consideration whether the Work, represented as an Infraction of Copy-Right, is or is not substantially the same with that for which the Property is claimed: where the Subject will not admit of much Variety, the original Labour of one Person will produce the same Results with the original Labour of another; but even in these Cases, if the Work is made out to be merely an Adoption of the Labour employed in the first, the Publication of it will be restrained.

Upon this Principle the Property has been protected in a Road Book, *Carnan v. Bowles*, 2 Bro. Ch. 80—*Gary v. Longman*, 1 East, 368—*Gary v. Faden*, 5 Vesey, 24;—in *Tables of Chronology*, *Truellet v. Murray*, 1 East, 363, n.;—in *Maps and Charts* (depending upon 8 Geo. II. c. 13 post); see 12 Vesey, 274;—an *East India Calendar*, *Mathewson v. Stockdale*, 15 Vesey, 270—(in that Case, Lord Erskine, granting the Injunction, said he had compared the Books, and found that, in a long List of Casualties, Removals, and Deaths, there was not the least Variation, even as to the Situation in the pages); so in the Case of a Court Calendar, Lord Eldon observing, that from the Identity of the Inaccuracies it was impossible to deny that the one was copied *verbatim & literatim* from the other—*Longman v. Winchester*, 16 Vesey, 269. In *King v. Reed*, 8 Vesey, 223, upon an Application for an Injunction with respect to *Tables of Interest*, the Lord Chancellor directed the Plaintiff to bring an Action. It falls within my own Knowledge, that an

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Action was brought, and the Case was, at the Trial, referred to Arbitration, as to the Question of the one Work being a Copy from the other.

In Matters of this Description, the Fact of Copying is made out as in *Longman v. Winchester*, by an Identity of Errors. I remember a *Nisi Prius* Case in which the Plaintiff was nonsuited, with respect to the Tables of Interest above alluded to, upon the Ground that the Errors of Calculation pointed out as shewing the Identity of the Work, destroyed, so far as they went, its Utility, & that, therefore, for a Work having such Imperfection, no Copy-Right could be claimed; but this Case was never brought before the Court, and was expressly disputed in the second Action; and it certainly seems very difficult to conceive, that the Property of a long and laborious Work should be defeated by a few accidental Errors in particular Calculations.

In *Cary v. Kearsley*, 4 Esp. 168, Lord Ellenborough is reported to have held, that the Identity of Names in a typographical Work was not sufficient to support a Count for printing and publishing the Plaintiff's Work generally, but to have admitted that such Evidence might support a Count for transcribing particular Parts.

[Query if it did not actually appear that the Work was not wholly printed—far if the general Appearance was the same, a Variety of Instances in which Errors were transcribed might be Evidence to satisfy the Jury as to copying the whole.]

[22] It is settled in many of the Cases, and is fully agreed, that an Action is maintainable, not only in respect of the Whole of a Work, but in respect of the Parts of it, which have been printed and transcribed—and an Action lies for printing the new Additions and Corrections of an old Work.—*Cary v. Longman*, 1 East. 359—*Mason v. Murray*, cited *ibid*.

[23] It is agreed, that a fair Abridgement of a Work is not protected by the Statute, but that Works colourably shortened are within the Statute, and are an Evasion of it.—*Gyles v. Wilkes*, 2 Atk. 141. The same Doctrines were stated as settled Law in *Bell v. Walker*, 1 Bro. Ch. 451.

[24] In the before mentioned Case of *Cary v. Kearsley*, 4 Esp. 168, Lord Ellenborough said, that it is lawful to adopt the Works of a cotemporary Writer and incorporate them in a new Work, provided this be done *bona fide* and not with a View to steal the original Copy-Right; but in *Roworth v. Wilkes*, 1 Camb. 94, where 75 out of 118 pages of a Work of the Plaintiff, on Printing, had been transcribed by the Defendant into the *Encyclopedia Londinensis*, his Lordship held, that an Action was maintainable, stating the Question to be, whether the Defendant's Publication would serve as a Substitute for that of the Plaintiff. A Review, he observed, would not in general serve as a Substitute for the Work reviewed, and even then, if it communicates the same Knowledge with the original Work, it is an undeniable Violation of Literary Property. The Intention to pirate is not necessary to support the Action; it is enough, that the publication complained of is in Substance a Copy whereby a Work vested in another is prejudiced.

[25] In *Seyne v. Moore*, 1 East. 161, n. which was an Action upon 17 Geo. 3. c. 37. (Act.) for pirating Charts, but was treated as depending upon the same Principles as Questions of Copy-Right, it appeared in Evidence, that the Defendant had used four Charts published by the Plaintiff, in making one large Map, but that there were very important Differences between them much in favour of the Defendant's, and the Evidence shewed the Plaintiff's Charts to be founded upon a wrong Principle. In his Charge to the Jury, Lord Mansfield said, "In all these Cases," (speaking of Cases of Copy-Right,) "the Question is Fact to come before the Jury is whether the Alteration be colourable or not & there must be such a Similitude as to make it probable and reasonable to suppose that one is a Transcript of the other, and nothing more than a Transcript. So in the Case of different Prints; no doubt different Men may take Impressions from the same Picture. The same Principle holds with regard to Charts; whether was it in his Intention to publish a Chart may take Advantage of all prior Publications." "You are told, that there are various and very material Alterations. The Chart of the Plaintiff is upon a wrong Principle, inapplicable to Navigation. The Defendant, therefore, has been correcting Errors, and not servilely copying. If you think so, you will find for the Defendant; if you think it is a mere servile Imitation, and pirated from the other, you will find for the Plaintiff." And in *Matthewson v. Spockdale*,

12 Vesey, 275, Lord Eldon said, "I admit, that no Man can monopolize such Subjects as the English Channel, the Island of St. Domingo, or the Events of the World; and every Man may take what is useful from the original Work, improve, add, and give to the Public the whole comprising the original Work, with the Additions and Improvements, and in such a Case there is no Invasion of any Right."

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In *Butterworth v. Robinson*, 5 Vesey, 709, an Injunction was granted in the first Instance, upon a Bill filed, to restrain the selling an Abridgement of Cases in the Courts of Law—it being stated, that the Work was not a fair Abridgement; and that, except in colourable leaving out some Parts of the Cases, such as the Arguments of Counsel, it was a verbatim Copy of several of the Reports of Cases in the Courts of Law, and sending them of the Term Reports, of which the Plaintiff was Proprietor, comprising not a few Cases only, but all the Cases published in that Work—the chronological order of the original Work being changed to an alphabetical Arrangement, under Heads and Titles, to give it the Appearance of a new Work. The Lord Chancellor said, he had looked at one or two Cases with which he was well acquainted, and it appeared to him an extremely illiberal Publication. No very conclusive Inference can be drawn from this ex parte Opinion. The Case was not brought before the Court again, and in fact, (whether by Compromise or otherwise,) the Publication went on, and is completed in five Volumes, and is an Abridgement of all the Cases in Courts of Law, from the Beginning of the Reign of Geo. 3d, to the Conclusion of the Term Reports. Such a Work, selecting what is material from a large Body of Reports, and arranging the Matter collected so as to render it more commodious for practical Reference, whether the Arrangement of the Titles be alphabetical or systematic, appears to have very much the Features of an original Work. The Motion, in the preceding Case, does not seem to dispute the Right of selecting Passages from Books of Reports, (including entire Judgments,) in Treatises upon particular Subjects; and I cannot see any material Distinction between a Liberty to extract all Cases respecting Bankruptcy, Poor Laws, Insurance, and any other given Number of Subjects separately, and a Liberty to publish a general Work embracing the whole of the Subjects which have come under legal Discussion. In fact if all Works were suppressed, of which a considerable Portion consisted of mere Transcripts from Books of Reports, the Law Libraries would be very much thinned, and would be deprived of several Works which are attended with considerable Convenience and Utility.—See *Dodley v. Kinnersley*, Ambler, 403, in which Sir Thomas Clarke, M. R. refused an Injunction for restraining the publishing an Abstract of the Prince of Abyssinia in a Magazine. He observed, that no certain Line can be drawn to distinguish a fair Abridgement, and that every Case must depend upon its own Circumstances—some Stress was laid upon the Plaintiff having himself published Extracts in the Annual Register.

[36] In *Cary v. Faden* 5 Vesey (being one of the many Cases which have been before the Court, respecting Cary's Improved Road Book, Lord Loughborough refused an Injunction, seemingly on the Ground that a great Part of the Plaintiff's Work, was a Copy of the preceding Work of Patterson, in which (as appears from the Case,) the Copy-Right had not expired; but from the general Tenor of the Case, it is clear that a Party has, in such Cases, a Copy-Right in his own Additions, which has indeed been repeatedly decided, with regard to the identical Work.

[37] In the before mentioned Case of *Cary v. Kearley*, 4 Rep. 168, it seems to have been the Opinion of Lord Ellenborough, that the first Publisher of a Book, the Copy of which he obtains by a Breach of Trust, may maintain an Action against a Stranger for printing it.

[38] In *Walcot v. Walker*, 7 Vesey 1, which depended upon an Agreement between the Parties, Lord Eldon, after referring to some Opinions of Lord Chief Justice Eyre not in Point, said "if the Doctrine of the Chief Justice was right, and he thought it was, that Publications might be of such a Nature that the Author could maintain no Action at Law, it was not the Business of that Court, even upon the Submission in the Answer, to decree either an Injunction or an Account of the Profits of Works of such a Nature that the Author could maintain no Action at Law, for the Invasion of that which he calls his Property, but which the Policy of the Law would not permit him to consider as

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his Property. It was the Duty of the Court to know, whether an Action at Law would lie or not, for if not, the Court ought not to give an Account of the unhallowed Profits of libellous Publications. Declaring that at present, he was in total Ignorance of the Nature of the Work, and whether the Plaintiff could have a Property in it or not; he would see the Publications and determine upon the Nature of them, whether there was Question enough to send to Law, as to the Property in the Copies; for if not, he would not Act upon the Submission in the Answer. If, upon Inspection, the Work appeared innocent, he would Act upon that Submission; if criminal, he would not Act at all; and if doubtful he would send that Question to Law.

It is observable that, in that Case, there was no Suggestion made to the Court, of any Illegality in the Contents of the Work, and it does not distinctly appear, whether the Court took the Matter up as a general Rule, that no Relief shall be given in respect of any Publication, until after a personal Examination, as to whether the Contents are libellous; or whether the Interposition was on Account of a previous Impression respecting the ludicrous Writings published under the fictitious Name of Peter Pindar, and to which the particular Question immediately related.

In *Hime v. Dale*, 3 Campb. N. P. 27 n. it was contended, that on the Principle stated in the last Case, there could be no Copy-Right in the well known Song of Abraham Newland, because the Lines,

Though Justice 'tis known,
Can see through a Mill stone,
She can't see through Abraham Newland."

was a Libel upon the Administration of Justice.

It might be supposed, that the Argument was merely offered for the Sake of a Jest, but it seems to have received a serious Answer from the Court,—Lord Ellenborough saying, that if the Composition appeared on the Face of it to be a Libel, so gross as to affect the public Morals, he should advise the Jury to give no Damages; and his Lordship and Mr. J. Lawrence both forcibly expressed the Opinion that the Song was not a Libel. With respect to the Question itself, it certainly does appear to be a correct Principle, that a Court of Justice shall not give Relief in favour of the Publication of a Libel any more than for any other Breach of the Law, but too much Astuteness may be sometimes shewn, in giving the Character of a Libel to flying Squibs, which are only calculated to raise a harmless Laugh.

[29] In Cases of an Invasion of Copy-Right, the Remedy is either by Action for the Penalties upon the Statute, by Action on the Case for Damages, or by Injunction in Equity. Upon the two former no Observations will be requisite, a short Examination of the latter will conclude the present Note. It is clear that the proceeding by Injunction is the most ready and effectual Remedy which can be resorted to on the Part of the Plaintiff, but that a great degree of Caution in the Application of that Proceeding, in the first Instance, is requisite for preventing Injustice to the Defendant, whose Loss does not from the Nature of it admit of Reparation, if the Injunction should, upon further Investigation, be found to have been erroneously applied, and the Judges of Courts of Equity have in many Cases expressed a strong Sense of the Importance of this Principle.

In *Hill v. the University of Oxon*, 1 Vern. 275, the Lord Keeper, North, refused an Injunction in Favour of the Right of the King's Printer, against the Claim of the Universities to print Bibles for Sale, until he had established his Right at Law; observing, that in Case the Right should be found with the Defendants, they would, by such a Prohibition, receive a Prejudice that he could not compensate nor make good to them; and Lord Cresswell, in the recent Case of *Grierson v. Jackson*, above referred to, followed the same Course.

In the general Discussion of the Common Law Right of Literary Property, in *Miller v. Taylor*, 4 Bur. 2303, 1 Bl. Rep. 675, a great Stress was laid upon the different Injunctions which had been granted by Courts of Equity, in Favour of such Right.—Lord Mansfield (who had had very great Experience in the Court of Chancery) said, that he looked at the Injunctions which had been granted or continued before Hearing, as equal to any final Decree; for, that such Injunction never is granted upon Motion, unless the legal Property of the Plaintiff is made out, nor continued after Answer, unless it remains clear.

The Court of Chancery never grants Injunctions in Cases of this Kind, when there is any Doubt.—Sir Joseph Yates, on the contrary, in combating the general Common Law Right, expressed his Opinion, that the Injunctions, being temporary only, decided Nothing at all.—Lord Camden, in his Speech in *Donaldson v. Beckett*, already referred to, expressed himself upon this Part of the Argument as follows:—"All the Injunction Cases have been ably given; though I shall only add, in general Terms, that they can prove Nothing if a thousand Injunctions had been granted, unless the Chancellor at the Time he granted them had pronounced a solemn Opinion, that they were grounded upon the Common Law.—Lord Hardwicke, after 'twenty Years' Experience, in the last Case of the Kind that came before him, declared that the Point had never yet been determined.—Lord Northington granted them on the Idea of a doubtful Title. I continued the Practice on the same Foundation, so did the present Lord Chancellor. Where then is the Chancellor who has declared, *ex cathedra*, that he decided upon the Common Law Right? Let the Decision be produced in direct Terms."

I am not aware of any other general Opinions being expressed as to the Degree of Judgment which ought to be entertained in Favour of the Right, in Order to induce the granting or continuing an Injunction previous to the Hearing, prior to the Case already cited of the Universities of Oxford and Cambridge v. Richardson, 1 Vesey 689, in which Lord Eldon, after citing the Observations of Lord Mansfield, and declaring that he could not accede to the Proposition so unqualified, adverted and assented to the Doctrine established in some recent Cases respecting Patents, in which the Court of Chancery had enjoined the Defendants, during the Pendency of the Proceedings at Law, upon the Ground that they had had Possession of the Invention under Colour of the Title a Patent questionable in that Degree gave them; and, upon the same Matter coming before the House of Lords, in *Bruce v. Bruce*, cited 15 Vesey, 505, he intimated the same Opinion.—Lord Erskine quoting that Opinion says, "Lord Eldon, when I pressed him with the Cases that are now pressed upon me, to shew that Injunctions proceeding upon legal Right ought to have their Foundation in a legal Title, receiving Consummation by a legal Judgment, answers, that the Court granting the Injunction until the Hearing did not decide ultimately between the Parties." The Opinion of Lord Eldon in Favour of supporting, by Injunction, the supposed Possession of Patent Inventions, accompanied by Colour of Right, is also expressed and acted upon in *Harmar v. Plane*, 14 Vesey, 130, which, with my Impressions respecting it, I have stated in the Note to the preceding Number.

In *Hogg v. Kirby*, 8 Vesey, 224, Lord Eldon, referring to the View taken of the Subject by Lord Mansfield in *Millar and Taylor*, says, that in these Cases which are very well expounded in that Case, a Court of Equity takes upon itself to determine, as well as it can, the Right in this Period, and with a Conviction, that if then the Cause was hearing they would act upon the same Rule. The Court takes upon itself, that which may involve it in Mistake to determine the legal Question. It is the Decision of a Judge sitting in Equity, upon a legal Question, and therefore not having all the Authority of a Decision of a Court at Law, but giving an opinion, and pledged to maintain it, unless there should be Occasion to alter it.

Lord Erskine, in *Gurney v. Longman*, 13 Vesey, 505, (respecting the Publication of Lord Melville's Trial,) said, I am so much convinced by the Arguments for the Defendant as to the Effect of an Injunction, upon a Publication of this temporary Nature, calculated merely for the Gratification of present Curiosity, that, unless I had a strong Impression that at the Hearing I should continue of the same Opinion, and should grant a perpetual Injunction, I would not grant the Injunction now, which I only do as there is no Probability that new Facts will appear by the Answer.

In case there should be any Difference between the Views which have been taken upon this Subject, and which is still open to Discussion, the Justice of the Case is apparently much in Favour of that Opinion, which is adverse to granting this extraordinary Mode of Relief upon less satisfactory Grounds than such as would induce an absolute Decision upon the direct Question of Right, supposing that Question to have been the proper and immediate Subject of the Enquiry.

No. 3.

8 George II. c. 13.—An Act for the Encouragement of the Arts of Designing, Engraving and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned.

8 Geo. II. c. 13.

Preamble
See 3 Wils. 60.

Property of Prints
vested in the In-
ventor for fourteen
Years.

Proprietor's Name
to be affixed to
each Print.

WHEREAS divers Persons have by their own Genius, Industry, Pains and Expence, invented and engraved, or worked in *Mezzotinto* or *Chiaro Oscuro*, Sets of Historical and other Prints, in Hopes to have reaped the sole Benefit of their Labours: And whereas Print-sellers and other Persons have of late, without the Consent of the Inventors, Designers and Proprietors of such Prints, frequently taken the Liberty of copying, engraving and publishing, or causing to be copied, engraved and published, base Copies of such Works, Designs and Prints, to the very great Prejudice and Detriment of the Inventors, Designers and Proprietors thereof; For Remedy thereof, and for preventing such Practices for the future, may it please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Twenty-fourth Day of June which shall be in the Year of our Lord One Thousand Seven Hundred and Thirty-five, every Person who shall invent and design, engrave, etch or work in *Mezzotinto* or *Chiaro Oscuro*, or from his own Works and Inventions(1) shall cause to be designed and engraved, etched or worked in *Mezzotinto* or *Chiaro Oscuro*, any Historical or other Print or Prints, shall have the sole Right and Liberty of printing and reprinting the same for the Term of fourteen Years, to commence from the Day of the first publishing thereof, which shall be truly engraved(2) with the Name of the Pro-

(1) The Act is not confined to Inventions, strictly speaking, but means the designing or engraving any Thing that is already in Nature;—and Lord Hardwicke granted an Injunction as to Prints of medicinal Plants, saying, that the Defendant, to make out the Case he aims at, must shew that they are, in any other Book or Herbal, in the same Manner and Form as they are represented here.—*Blackwell v. Harper*, 5 Ark. 93; but in the subsequent Case of *Jeffreys v. Baldwin*, Ambler, 164, his Lordship refused an Injunction with respect to a Drawing of Herring Busses, saying, that “the Case was not within the Statute, which was made for the Encouragement of Genius and Art; if it was, any Person who employs a Printer or Engraver would be so too. The Statute is, in this respect, like the Statute of new Inventions; from which it is taken.” But any Objection of this Kind seems to be removed by Stat. 7 G. 3, c. 38, post. As to the Degree of Originality which brings a Case within the Statute, see Note to the preceding Number, and *Roworth v. Wilkes*, 1 Campb. 94.

(2) Both the Date and the Name must be engraved to entitle the Party to the Penalties under the Statute.—*Sayer v. Dicey*, 3 Wils. 60. An Action on the Case may be maintained by the Publisher or his Assignee, and this commences independently of the Authority of Statute 17 Geo. 3, c. 57, post. In *Thomson v. Symonds*, 5 T. R. 41, it seems to be taken for granted, that to support such Action, it is necessary that the Date and Name of the Publisher shall be engraved or disclosed; but in *Haworth v. Wilkes*, 1 Campb. N. P. 94, Lord Ellenborough held, that although the Plaintiff's Name was not engraved, if there had been a Piracy, he was intitled to a Verdict; for the Statute being vested, the Law gives a Remedy. He assimilated the Case to *Beckford v. Hood*, 7 T. R. 690, decided on Statute 8 Anne, c. 19, (vi. the preceding Number,) but query, if there is not an evident Difference in the Language of the Statutes—and

prietor on each Plate, and printed on every such Print or Prints; and that if any Print-seller or other Person whatsoever, from and after the said Twenty-fourth Day of June One Thousand Seven Hundred and Thirty-five, within the Time limited by this Act, shall engrave, etch or work as aforesaid, or in any other Manner copy and sell, or cause to be engraved, etched or copied and sold, in the Whole or in Part, by varying, adding to or diminishing from the main Design, or shall print, reprint or import for Sale, or cause to be printed, reprinted or imported for Sale, any such Print or Prints, or any Parts thereof, without the Consent of the Proprietor or Proprietors thereof first had and obtained in Writing, signed by him or them respectively, in the Presence of two or more credible Witnesses, or knowing the same to be so printed or reprinted without the Consent of the Proprietor or Proprietors, shall publish, sell or expose to Sale, or otherwise, or in any other Manner dispose of, or cause to be published, sold or exposed to Sale; or otherwise, or in any other Manner disposed of, any such Print or Prints, without such Consent first had and obtained as aforesaid, then such Offender or Offenders shall forfeit the Plate or Plates on which such Print or Prints are or shall be copied, and all and every Sheet or Sheets (being Part of, or whereon such Print or Prints are or shall be so copied and printed) to the Proprietor or Proprietors of such original Print or Prints, who shall forthwith destroy and deface the same; and further, that every such Offender or Offenders shall forfeit five Shillings for every Print which shall be found in his, her, or their Custody, either printed or published, and exposed to Sale, or otherwise disposed of, contrary to the true Intent and Meaning of this Act; the one Moiety thereof to the King's most Excellent Majesty, his Heirs and Successors, and the other Moiety thereof to any Person or Persons that shall sue for the same, to be recovered in any of his Majesty's Courts of Record at Westminster, by Action of Debt, Bill, Plaint or Information, in which no Wager of Law, Essoin, Privilege or Protection, or more than one Imparlonce, shall be allowed.

II. Provided nevertheless, That it shall and may be lawful for any Person or Persons, who shall hereafter purchase any Plate or Plates for printing, from the original Proprietors thereof, to print and reprint from the said Plates, without incurring any of the Penalties in this Act mentioned.

III. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever for doing or causing to be done any Thing in pursuance of this Act, the same shall be brought within the Space of three Months after so doing; and the Defendant and Defendants in such Action or Suit shall or may plead the General Issue, and give the Special Matter in Evidence; and if upon such Action or Suit a Verdict shall be given for the Defendant or Defendants, or if the Plaintiff or Plaintiffs become nonsuited or discontinued his, her, or their Action or Actions, then the Defendant or Defendants shall have and recover full Costs, for the Recovery whereof he shall have the same Remedy as any other Defendant or Defendants in any other Case hath or have by Law.

IV. Provided always, and be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced or brought against any Person or Persons for any Offence committed against this

No. 3.
8 Geo. II. c. 13.
Penalty of Print
sellers or other
pirating the same.

Not to extend
to Purchasers of
Plates from the
original Proprie-
tors.

Limitation of
Actions.

General Issue.

whether, in this Statute, the engraving the Name, &c. is not an express Condition to the vesting of the Right; whereas, in that Act, the Direction for entering as Stationers' Hall was a separate and distinct Provision. It is however to be observed, that, in *Blackwall v. Harpers*, 2 Aukr. 28, Lord Hardwicke considers the Provision for engraving the Name and Date as only directory and only necessary to make the Penalty incur.

No. 3.
8 Geo. II. c. 13.

Act, the same shall be brought within the Space of three Months after the Discovery of every such Offence, and not afterwards; any Thing in this Act contained to the contrary notwithstanding.

Clause relating to
J. Pine.

'V. And whereas *John Pine* of *London*, Engraver, doth propose to engrave and publish a Set of Prints, copied from several Pieces of Tapestry in the House of Lords, and his Majesty's Wardrobe, and other Drawings relating to the *Spanish* Invasion, in the Year of our Lord One Thousand Five Hundred and Eighty-eight; Be it further enacted by the Authority aforesaid, That the said *John Pine* shall be intitled to the Benefit of this Act, to all Intents and Purposes whatsoever, in the same Manner as if the said *John Pine* had been the Inventor and Designer of the said Prints.

Publick Act.

VI. And be it further enacted by the Authority aforesaid, That this Act shall be deemed, adjudged and taken to be a publick Act, and be judicially taken Notice of as such by all Judges, Justices and other Persons whatsoever, without specially pleading the same.

No. 4.

12 George II. c. 36.—An Act for prohibiting the Importation of Books reprinted Abroad, and first composed or written, and printed in *Great Britain*; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen *ANNE*, as impowers the limiting the Prices of Books.

12 Geo. II. c. 36.
Preamble.

'WHEREAS the Duties payable upon Paper imported into this Kingdom, to be made use of in Printing, greatly exceed the Duties payable upon the Importation of printed Books, whereby Foreigners and others are encouraged to bring in great Numbers of Books originally printed and published in this Kingdom and reprinted Abroad, to the Diminution of his Majesty's Revenue, and the Discouragement of the Trade and Manufacture of this Kingdom; For the preventing thereof for the future, may it please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Twenty-ninth Day of *September* One Thousand Seven Hundred and Thirty-nine, it shall not be lawful for any Person or Persons whatsoever, to import or bring into this Kingdom for Sale, any Book or Books first composed or written, and printed and published in this Kingdom, and reprinted in any other Place or Country whatsoever; and if any Person or Persons shall import or bring into this Kingdom for Sale, any printed Book or Books, so first composed or written, and printed in this Kingdom, and reprinted in any other Place or Country as aforesaid; or knowing the same to be so reprinted or imported, contrary to the true Intent and Meaning of this Act, shall sell, publish, or expose to Sale any such Book or Books; then every such Person or Persons so doing or offending, shall forfeit the said Book or Books, and all and every Sheet or Sheets thereof; and the same shall be forthwith damasked, and made Waste Paper; and further, that every such Offender or Offenders shall forfeit the Sum of Five Pounds, (1) and double the Value

(1) Two Penalties may be incurred upon this Clause on the same Day.—*Brooke v. Milliken*, 3 T. R. 509.

of every Book which he or they shall so import or bring into this Kingdom, or shall knowingly sell, publish, or expose to Sale, or cause to be sold, published, or exposed to Sale, contrary to the true Intent and Meaning of this Act; the one Moiety thereof to the King's most Excellent Majesty, his Heirs and Successors, and the other Moiety to any Person or Persons that shall sue for the same; to be recovered with Costs of Suit in any of his Majesty's Courts of Record at *Westminster* by Action of Debt, Bill, Plaint or Information: in which no Wager of Law, Essoin, or Protection, or more than one Imparlance shall be allowed; and if the Offence be committed in *Scotland*, to be recovered before the Court of Session there, by summary Action: Provided that this Act shall not extend to any Book that has not been printed or reprinted in this kingdom within Twenty Years before the same shall be imported.

No. 4.

12 Geo. II. c. 36.

II. Provided always, That nothing in this Act contained shall extend to prevent or hinder the Importation of any Book first composed or written, and printed in this Kingdom, which shall or may be reprinted Abroad, and inserted among other Books or Tracts, to be sold therewith, in any Collection, where the greatest Part of such Collection shall have been first composed or written, and printed Abroad; any Thing in this Act contained to the contrary notwithstanding.

III. And be it further enacted by the Authority aforesaid, That so much of an Act made in the eighth Year of the Reign of her late Majesty Queen *ANNE*, intituled, *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, whereby it was provided and enacted, That if any Bookseller or Booksellers, Printer or Printers shall, after the said Five and Twentieth Day of *March* One Thousand Seven Hundred and Ten, set a Price upon, or sell, or expose to Sale any Book or Books, at such a Price or Rate as shall be conceived by any Person or Persons to be high and unreasonable; it shall and may be lawful for any Person or Persons to make Complaint thereof to the Lord Archbishop of *Canterbury* for the Time being, the Lord Chancellor or Lord Keeper of the Great Seal of *Great Britain* for the Time being, the Lord Bishop of *London* for the Time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the Time being, the Vice Chancellors of the two Universities for the Time being, in that Part of *Great Britain* called *England*, the Lord President of the Sessions for the Time being, the Lord Justice General for the Time being, the Lord Chief Baron of the *Exchequer* for the Time being, the Rector of the College of *Edinburgh* for the Time being, in that Part of *Great Britain* called *Scotland*, who, or any one of them, shall, and have hereby full Power and Authority from Time to Time, to send for, summon, or call before him or them, such Bookseller or Booksellers, Printer or Printers, and to examine and enquire of the Reason of the Dearness and Enhancement of the Price of Value of such Book or Books by him or them so sold, or exposed to Sale; and if upon such Enquiry and Examination, it shall be found that the Price of such Book or Books is enhanced, or any way too high and unreasonable, then, and in such Case, the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice Chancellors of the Universities in that Part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh* in that Part of *Great Britain* called *Scotland*, or any one or more of them, to enquire and examining, have hereby full Power and Authority to reform and redress the same, and to limit and settle the Price of every such printed Book

Clause in 8 Anne.
c. 19, repealed.

No. 4.
12 Geo. II. c. 36.

and Books, from Time to Time, according to the best of their Judgments, and as to them shall seem just and reasonable; and in case of Alteration of the Rate or Price from what was set or demanded by such Bookseller or Booksellers, Printer and Printers, to pay all the Costs and Charges that the Person or Persons so complaining shall be put unto by reason of such Complaint, and of the causing such Rate or Price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice Chancellors of the two Universities in that Part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh* in that Part of *Great Britain* called *Scotland*, or any one of them, by Writing under their Hands and Seals, and thereof publick Notice shall be forthwith given by the said Bookseller or Booksellers, Printer or Printers, by an Advertisement in the *Gazette*; and if any Bookseller or Booksellers, Printer or Printers, shall, after such Settlement made of the said Rate and Price, sell, or expose to Sale, any Book or Books at a higher or greater Price than what shall have been so limited and settled as aforesaid; then, and in every such Case, such Bookseller or Booksellers, Printer or Printers, shall forfeit the Sum of five Pounds for every such Book so by him, her, or them sold or exposed to Sale, one Moiety thereof to the Queen's most excellent Majesty, her Heirs and Successors, and the other Moiety to any Person or Persons that shall sue for the same, to be recovered with Costs of Suit, in any of her Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint or Information, in which no Wager of Law, Essoin, Privilege or Protection, or more than one Imparlance shall be allowed; and every Part of the said Clause, shall be, and the same is hereby repealed

Further continued
by 27 Geo 2. c. 18,
and 33 Geo 2. c.
16.

IV. And be it further enacted, That this Act (except so much thereof as repeals the before-mentioned Clause in the said Act of the eighth Year of the Reign of the late Queen *ANNE*, relating to the Prices of Books) shall continue and be in Force from the said Twenty-ninth Day of *September* One Thousand Seven Hundred and Thirty-nine, for and during the Space of seven Years, and from thence to the End of the then next Session of Parliament, and no longer.

No. 5.

7 George III. c. 38.—An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints; and for vesting in, and securing to *Jane Hogarth*, Widow, the Property in certain Prints.

7 Geo. III. c. 38.

8 Geo. II. c. 13.

Original Inven-
tors, &c. of Prints,
&c.

WHEREAS an Act of Parliament passed, in the eighth Year of the Reign of his late Majesty King GEORGE the Second, intituled, *An Act for the Encouragement of the Arts of Designing, Engraving, and Etching, Historical and other Prints, by vesting the Properties thereof in the Inventors, and Engravers, during the Time therein mentioned*, has been found ineffectual for the Purposes thereby intended; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of

January, One Thousand Seven Hundred and Sixty-seven, all and every Person and Persons who shall invent or design, engrave, etch, or work in *Mezzotinto* or *Chiaro Oscuro*, or, from his own Work, Design, or Invention, shall cause or procure to be designed, engraved, etched, or worked in *Mezzotinto* or *Chiaro Oscuro*, any Historical Print or Prints, or any Print or Prints, of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, shall have, and are hereby declared to have, the Benefit and Protection of the said Act (1) and this Act, under the Restrictions and Limitations herein aftermentioned.

No 5.
7 Geo. III. c. 38.

II. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *January*, One Thousand Seven Hundred and Sixty-seven, all and every Person and Persons who shall engrave, etch, or work in *Mezzotinto* or *Chiaro Oscuro*, or cause to be engraved, etched, or worked, any Print, taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, shall have, and are hereby declared to have, the Benefit and Protection of the said Act, and this Act, for the Term herein after-mentioned, in like Manner, as if such Print had been graven or drawn from the Original Design of such Graver, Etcher, or Draftsman, and if any Person shall engrave, print, and publish, or import for Sale, any Copy of any such Print, contrary to the true Intent and Meaning of this and the said former Act, every such Person shall be liable to the Penalties contained in the said Act, to be recovered as therein and herein after is mentioned.

intituled to the Benefit of secured and present Act, &c.

“ The sole Right of printing and reprinting the late *W. Hogarth's* “ Prints, vested in his Widow and Executrix for twenty Years. “ Penalty of copying, &c. any of them, before Expiration of the “ Term; such Copies excepted as were made and exposed to Sale “ after the Term of fourteen Years, for which the said Works were “ first licensed, &c ”

V. And be it further enacted by the Authority aforesaid, That all and every the Penalties and Penalty inflicted by the said Act, and extended, and meant to be extended, to the several Cases comprised in this Act, shall and may be sued for and recovered in like Manner, and under the like Restrictions and Limitations, as in and by the said Act is declared and appointed; and the Plaintiff or common Informer, in every such Action (in case such Plaintiff or common Informer shall recover any of the Penalties incurred by this or the said former Act), shall recover the same, together with his Full Costs of Suit.

VI. Provided also, That the Party prosecuting shall commence his Prosecution within the Space of six Calendar Months after the Offence committed.

VII. And be it further enacted by the Authority aforesaid, That the sole Right and Liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective Proprietors, for the Space of twenty-eight Years, to commence from the Day of the first publishing of any of the Works respectively herein before and in the said former Act mentioned.

The Right intended vested in the Proprietors for 28 Years.

VIII. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced or brought against any

Limitation of Actions.

(1) It is observable, that this Act does not expressly require the Name of the Proprietor and the Date of Publication to be engraved on the Print—but query if the Provision of Statute 3 Geo. II. in that respect, is not to be considered as included by Reference.

- No. 5. Person or Persons whatsoever, for doing, or causing to be done, any
 7 Geo. III. c. 36. Thing in pursuance of this Act, the same shall be brought within the
 Space of six Calendar Months after the Fact committed; and the
 Defendant or Defendants in any such Action or Suit shall or may
 General Issue. plead the General Issue, and give the Special Matter in Evidence;
 and if, upon such Action or Suit, a Verdict shall be given for the
 Defendant or Defendants, or if the Plaintiff or Plaintiffs become non-
 suited, or discontinue his, her, or their Action or Actions, then the
 Defendant or Defendants shall have and recover Full Costs; for the
 Full Costs. Recovery whereof he shall have the same Remedy as any other
 Defendant or Defendants, in any other Case, hath or have by Law.

No. 6.

15 George III. c. 53.—An Act for enabling the two Universities in *England*, the four Universities in *Scotland*, and the several Colleges of *Eton*, *Westminster*, and *Winchester*, to hold in Perpetuity their Copy Right in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other Purposes of Education; and for amending so much of an Act of the eighth Year of the Reign of Queen ANNE, as relates to the Delivery of Books to the Warehouse Keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned.

- 15 Geo. III. c. 53. ' **W**HEREAS Authors have heretofore bequeathed or given, and
 may hereafter bequeath or give the Copies of Books composed
 by them, to or in Trust for one of the two Universities in that Part
 of *Great Britain* called *England*, or to or in Trust for some of the
 Colleges or Houses of Learning within the same, or to or in Trust
 for the several Colleges of *Eton*, *Westminster*, and *Winchester*, and
 in and by their several Wills or other Instruments of Donation, have
 directed or may direct, that the Profits arising from the printing and
 reprinting such Books shall be applied or appropriated as a Fund for
 the Advancement of Learning, and other beneficial Purposes of
 Education within the said Universities and Colleges aforesaid: And
 whereas such useful Purposes will frequently be frustrated, unless
 the sole printing and reprinting of such Books, the Copies of which
 have been or shall be so bequeathed or given as aforesaid, be pre-
 served and secured to the said Universities, Colleges, and Houses of
 Learning respectively, in Perpetuity: May it therefore please your
 Majesty that it may be enacted; and be it enacted by the King's
 most Excellent Majesty, by and with the Advice and Consent of the
 Lords Spiritual and Temporal, and Commons, in this present Parlia-
 ment assembled, and by the Authority of the same, That the said
 Universities and Colleges respectively shall, at their respective Presses,
 have, for ever, the sole Liberty of printing and reprinting all such
 Books as shall at any Time hereafter have been, or having not been
 heretofore published or assigned) shall at any Time hereafter be be-
 queathed, or otherwise given by the Author or Authors of the same
 respectively, or the Representatives of such Author or Authors, to or
 in Trust for the said Universities, or to or in Trust for any College or
 House of Learning within the same, or to or in Trust for the said four
 Universities in *Scotland*, or to or in Trust for the said Colleges of

Universities, &c.
 to have, for ever,
 the sole Right of
 printing, &c.

Eton, Westminster, and Winchester, or any of them, for the Purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any Term of Years, or other limited Term; any Law or Usage to the contrary hereof in any wise notwithstanding.

No. 6.
15 Geo. III. c. 53.

II. And it is hereby further enacted, That if any Bookseller, Printer, or other Person whatsoever, from and after the Twenty-fourth Day of *June*, One Thousand Seven Hundred and Seven-fifty, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such Book or Books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to Sale, or cause to be sold, published, or exposed to Sale, any such Book or Books; then such Offender or Offenders shall forfeit such Book or Books, and all and every Sheet or Sheets, being Part of such Book or Books, to the University, College, or House of Learning respectively, to whom the Copy of such Book or Books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste Paper of them; and further, that such Offender or Offenders shall forfeit one Penny for every Sheet which shall be found in his, her, or their Custody, either printed or printing, published or exposed to Sale, contrary to the true Intent and Meaning of this Act; to one Moiety thereof to the King's most Excellent Majesty, his Heirs and Successors, and the other Moiety thereof to any Persons who shall sue for the same; to be recovered in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Session in *Scotland*, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoin, Privilege, or Protection, or more than one Impar lance, shall be allowed.

Persons printing or selling such Books shall forfeit the same, and also 1d. for every Sheet;

one Moiety to his Majesty, and the other to the Prosecutor.

III. Provided nevertheless, That nothing in this Act extend to grant any exclusive Right, otherwise than so long as the Books or Copies belonging to the said Universities or Colleges are printed only at their own Printing Presses within the said Universities or Colleges respectively, and for their sole Benefit and Advantage; and that if any University or College shall delegate, grant, lease, or sell their Copy Rights, or exclusive Rights of printing the Books hereby granted, or any Part thereof, or shall allow, permit, or authorise any Person or Persons, or Bodies Corporate, to print or reprint the same, that then the Privileges hereby granted are to become void and of no Effect, in the same Manner as if this Act had not been made; but the said Universities and Colleges, as aforesaid, shall nevertheless have a Right to sell such Copies so bequeathed or given as aforesaid, in like Manner as any Author or Authors now may do under the Provisions of the Statute of the eighth Year of her Majesty Queen *Ann*.

IV. And whereas many Persons may through Ignorance offend against this Act, unless some Provision be made whereby the Property of every such Book as is intended by this Act to be secured to the said Universities, Colleges, and Houses of Learning within the same, and to the said Universities in *Scotland*, and to the respective Colleges of *Eton, Westminster, and Winchester*, may be ascertained and known; be it therefore enacted by the Authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any Bookseller, Printer, or other Person whatsoever, to the Forfeitures or Penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to Sale, any Book or Books, unless the Title to the Copy of such Book or Books, which has or have been already bequeathed or given to any of the said Universities or Colleges aforesaid, be entered in the Register Book of the Company of Stationers kept for that Purpose, in such Manner as hath been usual; on or before the twenty-fourth Day of *June*, One Thousand Seven Hundred and Seventy-five; and of all and every such Book or

No Person subject to Penalties, unless entered before, &c.

Books must be entered within two Months after Request.

No. 6.
35 Geo. III. c. 53.

Books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such Register within the Space of two Months after any such Bequest or Gift shall have come to the Knowledge of the Vice Chancellors of the said Universities, or Heads of Houses and Colleges of Learning, or of the Principal of any of the said four Universities respectively; for every of which Entries so to be made as aforesaid, the Sum of six Pence shall be paid, and no more; which said Register Book shall and may, at all seasonable and convenient Times, be referred to, and inspected by any Bookseller, Printer, or other Person, without any Fee or Reward; and the Clerk of the said Company of Stationers shall, when and as often as thereunto required, give a Certificate under his Hand of such Entry or Entries, and for every such Certificate may take a Fee not exceeding six Pence.

If Clerk neglects
to make Entry
&c., Proprietor to
have like Benefit,
&c.

V. And be it further enacted, That if the Clerk of the said Company of Stationers for the Time being shall refuse or neglect to register or make such Entry or Entries, or to give such Certificate, being thereunto required by the Agent of, either of the said Universities or Colleges aforesaid, being the Proprietor of such Copy Right or Copy Rights as aforesaid (Notice being first given of such Refusal by Advertisement in the *Gazette*;) shall have the like Benefit as if such Entry or Entries, Certificate or Certificates, had been duly made and given; and the Clerk so refusing shall, for every such Offence, forfeit twenty Pounds to the Proprietor or Proprietors of every such Copy Right; to be recovered in any of his Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoin, Privilege, Protection, or more than one Imparllance, shall be allowed.

8 Anne, c. 19.

VI. And whereas in and by an Act of Parliament made in the eighth Year of the Reign of her late Majesty Queen ANNE, intituled, *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*, it is enacted, That nine Copies of each Book or Books, upon the best Paper, that, from and after the tenth Day of April, One Thousand Seven Hundred and Ten, should be printed and published, as therein mentioned, or reprinted and published with Additions, shall, by the Printer or Printers thereof, be delivered to the Warehouse Keeper of the said Company of Stationers for the Time being, at the Hall of the said Company, before such Publication made, for the Use of the Royal Library, the Libraries of the four Universities in Scotland, the Library of *Sion College* in London, and the Library commonly called *The Library belonging to the Faculty of Advocates* in Edinburgh, respectively; which such Warehouse Keeper was thereby required, within ten Days after Demand by the Keepers of the respective Libraries, or any Person or Persons by them, or any of them, authorised to demand the said Copy, to deliver the same for the Use of the aforesaid Libraries; and if any Proprietor, Bookseller, or Printer, or the said Warehouse Keeper of the said Company of Stationers, should not observe the Direction of the said Act therein, that then he and they so making Default, in not delivering the said printed Copies as aforesaid, should forfeit as therein mentioned: And whereas the said Provision has not proved effectual, but the same hath been eluded by the Entry only of the Title to a single Volume, or of some Part of such Book or Books so printed and published, or reprinted and republished, as aforesaid; be it enacted by the Authority aforesaid, That no Person or Persons whatsoever shall be subject to the Penalties in the said Act mentioned, for or by reason of the printing or reprinting, importing or exposing to Sale, any Book or Books, without the Consent mentioned

No Person subject
to Penalties in the
said Act, unless
the Title to the
Copy of the whole
be entered, &c.

in the said Act, unless the Title to the Copy of the whole of such Book, and every Volume thereof, be entered, in Manner directed by the said Act, in the Register Book of the Company of Stationers, and unless nine such Copies of the whole of such Book or Books, and every Volume thereof printed and published, or reprinted or republished, as therein mentioned, shall be actually delivered to the Warehouse Keeper of the said Company; as therein directed, for the several Uses of the several Libraries in the said Act mentioned. No. 6.
15 Geo. III. c. 55.

VII. And be it further enacted, by the Authority aforesaid, That if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever, for doing, or causing to be done, any Thing in pursuance of this Act, the Defendants in such Action may plead the General Issue, and give the Special Matter in Evidence; and if upon such Action a Verdict, or if the same shall be brought in the Court of Session in *Scotland*, a Judgement be given for the Defendant, or the Plaintiff become nonsuited, and discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a Defendant in any Case by Law hath. Limitation of Actions.
General Issue.

VIII. And be it further enacted by the Authority aforesaid, That this Act shall be adjudged, deemed, and taken to be a Public Act; and shall be judicially taken Notice of as such by all Judges, Justices, and other Persons whatsoever, without specially pleading the same. Publick Act.

No. 7.

17 George III. c. 57.—An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

WHEREAS an Act of Parliament passed in the eighth Year of the Reign of his late Majesty King GEORGE the Second, intituled, *An Act for the Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned*: And whereas by an Act of Parliament, passed in the seventh Year of the Reign of his present Majesty, for amending and rendering more effectual the aforesaid Act, and for Purposes therein mentioned, it was (among other Things) enacted, That, from and after the first Day of January One Thousand Seven Hundred and Sixty-seven, all and every Person or Persons who should engrave, etch, or work in *Mezzotinto* or *Chiaro Oscuro*, or cause to be engraved, etched, or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, should have, and were thereby declared to have, the Benefit and Protection of the said former Act, and that Act, for the Term therein after mentioned, in like Manner as if such Print had been graved or drawn from the Original Design of such Graver, Etcher, or Draughtsman: And whereas the said Acts have not effectually answered the Purposes for which they were intended, and it is necessary, for the Encouragement of Artists, and for securing to them the Property of and in their Works, and for the Advancement and Improvement of the aforesaid Arts, that such further Provisions should be made as are herein after mentioned and contained; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice 17 Geo. III. c. 57.
8 Geo. II.
7 Geo. III.

No. 7.
17 Geo. III. c. 57.
If any Engraver,
&c. shall engrave,
&c. any Print,
without the Con-
sent of the Pro-
prietor he shall be
liable to Damages
and Double Costs.

and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the twenty-fourth Day of *June*, One Thousand Seven Hundred and Seventy-seven, if any Engraver, Etcher, Print-seller, or other Person, shall, within the Time limited by the aforesaid Acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked in *Mezzotinto* or *Chiaro Oscuro*, or otherwise, or in any other Manner copy in the Whole, or in Part, by varying, adding to, or diminishing from, the main design, or shall print, reprint, or import for Sale, or cause or procure to be printed, reprinted, or imported for Sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any Copy or Copies of any Historical Print or Prints, or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, (1) or Plan, or any other Print or Prints whatsoever, which hath or have been, or shall be, engraved, etched, drawn, or designed, in any Part of *Great Britain*, without the express Consent of the Proprietor or Proprietors thereof, first had and obtained in Writing, signed by him, her, or them respectively, with his, her, or their own Hand or Hands, in the Presence of, and attested by, two or more credible Witnesses, then every such Proprietor or Proprietors (2) shall and may, by and in a special Action upon the Case, to be brought against the Person or Persons so offending, recover such Damages as a Jury on the Trial of such Action, or on the Execution of a Writ of Inquiry thereon, shall give or assess, together with Double Costs of Suit.

(1) As to publishing Charts on an improved and more useful Principle, see *Sayre v. Moore*, 1 E. 361, n. cited in Note to 8 Anne, c. 19, ante No. 2.

(2) This Action may be brought by an Assignee of the Print. It is not necessary to produce the original Plate in Evidence.—*Thomson v. Symonds*, 5 T. R. 41.

No. 8.

27 George III. c. 38.—An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Callicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time.*

27 Geo. III. c. 38.
Preamble.

From June 1, 1787, the Proprietor of any original Pattern for printing Linens to have the sole Right of printing it for two Months from first Publication;

WHEREAS it may be expedient, for the Encouragement of the Arts of designing original Patterns for Linens, Callicoes, Cottons, and Muslins, to vest the Property thereof in the Designers, Printers, or Proprietors, for a limited Time; for which Purpose may it please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *June*, One Thousand Seven Hundred and Eighty-seven, every Person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the Proprietor of any new and original Pattern or Patterns for printing Linens, Cottons, Callicoes, or Muslins, shall have the sole Right and Liberty of printing and reprinting the same for the Term of two Months, to commence from the Day of the first publishing thereof,

* See 34 Geo. III. c. 22, post, and Note.

which shall be truly printed, with the Name of the Printer or Proprietors at each End of every such Piece of Linen, Cotton, Callicoe, or Muslin; and that if any Callicoe Printer, Linen Draper, or other Person whatsoever, from and after the first Day of June, One Thousand Seven Hundred and Eighty-seven, within the Time limited by this Act, shall print, work, or copy, such original Pattern or Patterns, or cause to be printed, worked, or copied, such original Pattern or Patterns, or shall print or reprint, or cause to be printed or reprinted, any such Pattern or Patterns, and shall publish, sell, or expose to Sale, or in any other Manner dispose of, or cause to be published, sold, or exposed to Sale, or in any other Manner disposed of, any Linen, Cotton, Callicoe, or Muslin, so printed without the Consent of the Proprietor or Proprietors thereof, first had and obtained in Writing, signed by him or them respectively, in the Presence of two or more credible Witnesses, knowing the same to be so printed or reprinted without the Consent of the Proprietor or Proprietors of such Pattern, then every such Proprietor or Proprietors shall and may, if the Offence be committed in *England*, by and in a special Action upon the Case, to be brought against the Person or Persons so offending, recover such Damages as a Jury on the Trial of such Action, or on the Execution of a Writ of Inquiry thereon, shall give or assess, together with Costs of Suit, in which no Wager of Law, Essoin, Privilege, or Protection, or more than one Imparlance, shall be allowed; and if the Offence be committed in *Scotland*, every such Proprietor or Proprietors shall and may, by an Action to be brought before the Court of Session, or any Judge competent to try Civil Causes within his Bounds, recover such Damages as the said Court of Session, or the said Judge, shall give or assess, and for Payment whereof Decree shall be issued, with full Costs of Suit, on which all such Execution shall pass as is competent by the Laws and Practice of *Scotland* in the like Cases: Provided nevertheless, That it shall and may be lawful for any Person or Persons who shall hereafter purchase any Plate or Plates, Block or Blocks, for printing, from the Proprietors thereof, to print, reprint, and expose for Sale, or cause to be printed, reprinted, and exposed for Sale, from the said Plates or Blocks, without being liable to any Action on that Account.

No. 8.
27 Geo III. c. 38.

and whoever shall within that Period print the same to be liable to an Action for Damages;

but any Person purchasing Plates from the Proprietors may print therefrom.

II. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever, for any Offence committed against this Act, the same shall be brought within the Space of six Months after so doing, and the Defendant or Defendants, in such Action or Suit, if brought in *England*, shall and may plead the General Issue, and give the special Matter in Evidence; and if, upon such Action or Suit, a Verdict shall be given for the Defendant or Defendants, or if the Plaintiff or Plaintiffs become nonsuited, or discontinue his, her, or their Action or Actions, then the Defendant or Defendants shall have and receive full Costs; for the Recovery whereof he shall have the same Remedy as any other Defendant or Defendants in any other Case hath or have by Law; and if such Action be brought in *Scotland*, and not insisted in, or if the Defender be astolized, then the Defender shall be entitled to full Costs, for the Recovery whereof he shall have the same Remedy as herein-before is given to the Pursuer.

Mode of prosecuting Offences against this Act.

III. And be it further enacted by the Authority aforesaid, That this Act shall continue in force for one Year, and from thence to the End of the then next Session of Parliament; and shall be deemed, adjudged, and taken to be a public Act, and be judicially taken notice of as such by all Judges, Justices, and other Persons whatsoever, without specially pleading the same.

Act to continue in force for one Year, and to the End of the then next Session.

Continued by 29 G. 3, c. 19.

No. 9.

34 George III. c. 23.—An Act for amending and making perpetual an Act, made in the twenty-seventh Year of the Reign of his present Majesty, intituled, *An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time.*

[4th April, 1794]

34 Geo. III. c. 23.

27 Geo. III.

29 Geo. III.

Expedient to extend Time limited by 27 Geo. III.

Term further extended.

WHEREAS an Act was made in the twenty-seventh Year of the Reign of his present Majesty (intituled, *An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time*); which said Act was, by another Act made in the twenty-ninth Year of the Reign of his present Majesty, continued from the Expiration thereof until the first day of July One Thousand Seven Hundred and Ninety-four: And whereas the said first recited Act hath by Experience been found to be useful and beneficial: And whereas it is expedient that the Time limited by the said first recited Act for vesting the Property of New and Original Patterns for printing Linens, Cottons, Calicoes, or Muslins, in the Designers, Printers, and Proprietors thereof, should be extended for a longer Time: May it please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first day of July One Thousand Seven Hundred and Ninety-four, every Person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the Proprietor of any new and original Pattern or Patterns for printing Linens, Cottons, Calicoes, or Muslins, shall have the sole Right and Liberty of printing and reprinting the same for the Term of three Months, to commence from the Day of the first publishing thereof, which shall be truly printed⁽¹⁾ with the Name of the Printer or Proprietors at each End of every such Piece of Linen, Cotton, Calico, or Muslin; and that if any Calico Printer, Linen Draper, or other Person whatsoever, from and after the said first Day of July One Thousand Seven Hundred and Ninety-four, within the Time limited by this Act, shall print, work, or copy such Original Pattern or Patterns, or cause to be printed, worked, or copied such Original Pattern or Patterns, or shall print or reprint, or cause to be printed or reprinted, any such Pattern or Patterns, and shall publish, sell, or expose to Sale, or in any other Manner dispose of, any Linen, Cotton, Calico, or Muslin, so printed, (without the Consent of the Proprietor or Proprietors thereof first had and obtained in Writing, signed by him or them respectively in the Presence of two or more credible Witnesses,) knowing the same to be so printed or reprinted without the Consent of the Proprietor or Proprietors of such Pattern; then every such Proprietor or Proprietors shall and may, if the Offence

(1) In *Macmurdo v. Smith*, 7 T. R. 518, it was ruled, that the Omission to state, in a Declaration founded on this Statute, that the Day of first publishing was printed, &c. is cured by Verdict, it being alleged, that the Defendant printed within the Term of three Months, the Plaintiff was intitled to the sole Right, &c. but it was admitted, that the Declaration would have been bad on Demurrer.

be committed in *England*, by and in a special Action upon the Case, to be brought against the Person or Persons so offending, recover such Damages as a Jury on the Trial of such Action, or on the Execution of a Writ of Inquiry thereon, shall give or assess, together with Costs of Suit in which no Wager of Law, Essoin, Privilege, or Protection, or more than one Imparance, shall be allowed: And that in all other Respects the said first recited Act, and all the Clauses, Matters, and Things therein contained, (except so far as the same is varied by this Act,) shall be, and the same is hereby made perpetual.

No. 9.

34 Geo. III. c. 25.

Act made per-
petual.

No. 10.

38 George III. c. 71.—An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned. [21st June, 1798.]

WHEREAS divers Persons have, by their own Genius, Industry, Pains, and Expence, improved and brought the Art of making new Models and Casts of Busts, and of Statues of Human Figures, and of Animals, to great Perfection, in Hopes to have reaped the sole Benefit of their Labours; but that divers Persons have (without the Consent of the Proprietors thereof) copied and made Moulds from the said Models and Casts, and sold base Copies and Casts of such new Models and Casts, to the great Prejudice and Detriment of the original Proprietors, and to the Discouragement of the Art of making such new Models and Casts as aforesaid: For Remedy whereof, and for preventing such Practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same. That, from and after the passing of this Act, every Person who shall make or cause to be made any new Model, or Copy or Cast made from such new Model, of any Bust, or any Part of the Human Figure, or any Statue of the Human Figure, or the Head of any Animal, or any Part of any Animal, or the Statue of any Animal; or shall make or cause to be made any new Model, Copy, or Cast from such new Model, in Alto or Basso Relievo, or any Work in which the Representation of any Human Figure or Figures, or the Representation of any Animal or Animals shall be introduced, or shall make or cause to be made any new Cast from Nature of any Part or Parts of the Human Figure, or of any Part or Parts of any Animal, shall have the sole Right and Property in every such new Model, Copy, or Cast, and also in every such new Model, Copy, or Cast in Alto or Basso Relievo, or any Work as aforesaid, and also in every such new Cast from Nature as aforesaid, for and during the Term of fourteen Years from the Time of first publishing the same: Provided always, That every Person who shall make or cause to be made any such new Model, Copy, or Cast, or any such new Model, Copy, or Cast in Alto or Basso Relievo, or any Work as aforesaid, or any new Cast from Nature as aforesaid, shall cause his or her Name to be put thereon, with the Date of the Publication, before the same shall be published and exposed to Sale.

The sole Right and Property of making Models or Casts shall be vested in the original Proprietor for 14 Years.

II. And be it further enacted, That if any Person shall, within the said Term of fourteen Years, make or cause to be made any Copy or Cast of any such new Model, Copy, or Cast, or any such Model, Copy, or Cast in Alto or Basso Relievo, or any such Work as aforesaid, or any such new Cast from Nature as aforesaid, either by adding

Person making Copies of any Model or Cast, without the written Consent of the Proprietor, may be

No. 10.
33 Geo. III. c. 71.

prosecuted for Dam-
ages, by a spe-
cial Action on the
Case.

to or diminishing from any such new Model, Copy, or Cast, or adding to or diminishing from any such new Model, Copy, or Cast in Alto or Basso Relievo, or any such Work as aforesaid, or adding to or diminishing from any such new Cast from Nature, or shall cause or procure the same to be done, or shall import any Copy or Cast of such new Model, Copy, or Cast, or Copy or Cast of such new Model, Copy, or Cast in Alto or Basso Relievo, or any such Work aforesaid, or any Copy or Cast of any such new Cast from Nature as aforesaid, for Sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to Sale, or otherwise disposed of, any Copy or Cast of any such new Model, Copy, or Cast, or any Copy or Cast of such new Model, Copy, or Cast in Alto or Basso Relievo, or any such Work as aforesaid, or any Copy or Cast of any such new Cast from Nature as aforesaid, without the express Consent of the Proprietor or Proprietors thereof first had and obtained, in Writing signed by him, her, or them respectively, with his, her, or their Hand or Hands, in the Presence of and attested by two or more credible Witnesses, then and in all or any of the Cases aforesaid, every Proprietor or Proprietors of any such original Model, Copy, or Cast, and every Proprietor or Proprietors of any such original Model, or Copy or Cast in Alto or Basso Relievo, or any such Work as aforesaid, or the Proprietor or Proprietors of any such new Cast from Nature as aforesaid respectively, shall and may, by and in a special Action upon the Case, to be brought against the Person or Persons so offending, recover such Damages as a Jury on the Trial of such Action, or on the Execution of a Writ of Enquiry thereon, shall give or assess, together with full Costs of Suit.

Except such Per-
sons who shall pur-
chase the same of
the original Pro-
prietor.

III. Provided nevertheless, That no Person who shall hereafter purchase the Right, either in any such Model, Copy, or Cast, or in any such Model, Copy, or Cast in Alto or Basso Relievo, or any such Work as aforesaid, or any such new Cast from Nature, of the original Proprietor or Proprietors thereof, shall be subject to any Action for vending or selling any Cast or Copy from the same; any Thing contained in this Act to the contrary hereof notwithstanding.

Limitation of Ac-
tions.

IV. Provided also, That all Actions to be brought as aforesaid, against any Person or Persons for any Offence committed against this Act, shall be commenced within six Calendar Months next after the Discovery of every such Offence; and not afterwards.

No. 11.

41 George III. c. 107.—An Act for the further Encouragement of Learning, in the United Kingdom of *Great Britain and Ireland*, by securing the Copies and Copy-Right of printed Books, to the Authors of such Books, or their Assigns for the Time herein mentioned.

[2d July, 1801.]

41 G. III. c. 107.
Authors of Books
already composed,
and not printed or
published, and of
Books to be here-
after composed,
and their Assigns,
shall have the sole
Right of printing
them for fourteen
years:

WHEREAS it is expedient that further Protection should be afforded to the Authors of Books, and the Purchasers of the Copies and Copy-Right of the same, in the United Kingdom of *Great Britain and Ireland*; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Author of any Book or Books already composed, and not printed or published, and the Author of any Book or Books which shall hereafter be composed,

and the Assignee or Assigns of such Authors respectively, shall have the sole Liberty of printing and re-printing of such Book and Books, for the Term of fourteen Years, to commence from the Day of first publishing the same, and no longer; and that if any other Bookseller, Printer, or other Person whosoever, in any Part of the said United Kingdom, or in any Part of the *British Dominions in Europe*, shall, from and after the passing of this Act, print, re-print, or import, or shall cause to be printed, re-printed, or imported, any such Book or Books, without the Consent of the Proprietor or Proprietors of the Copy-Right of and in such Book or Books first had and obtained in Writing, signed in the Presence of two or more credible Witnesses, or, knowing the same to be so printed, re-printed, or imported, without such Consent of such Proprietor or Proprietors, shall sell, publish, or expose to Sale, or cause to be sold, published, or exposed to Sale, or shall have in his or their Possession for Sale, any such Book or Books, without such Consent first had and obtained as aforesaid, then such Offender or Offenders shall be liable to a special Action on the Case, at the Suit of the Proprietor or Proprietors of the Copy-Right of such Book or Books so unlawfully printed, re-printed, or imported, or published or exposed to Sale, or being in the Possession of such Offender or Offenders for Sale as aforesaid, contrary to the true Intent and Meaning of this Act; and every such Proprietor and Proprietors shall and may, by and in such Special Action upon the Case to be so brought against such Offender or Offenders in any Court of Record in that Part of the said United Kingdom, or of the *British Dominions in Europe*, in which the Offence shall be committed, recover such Damages as the Jury on the Trial of such Action, or on the Execution of a Writ of Enquiry thereon, shall give or assess, together with Double Costs of Suit; in which Action no Wager of Law, Essoign, Privilege, or Protection, nor more than one Imparllance shall be allowed; and all and every such Offender or Offenders shall also forfeit such Book or Books, and all and every Sheet and Sheets being Part of such Book or Books, and shall deliver the same to the Proprietor or Proprietors of the Copy-Right of such Book or Books, upon Order of any Court of Record in which any Action or Suit, in Law or Equity, shall be commenced or prosecuted by such Proprietor or Proprietors, to be made on Motion or Petition to the said Court; and the said Proprietor or Proprietors shall forthwith damask or make Waste Paper of the said Book or Books, and Sheet or Sheets respectively; and all and every such Offender or Offenders shall also forfeit the Sum of Threepence for every Sheet which shall be found in his or their Custody, either printed or printing, or published or exposed to Sale contrary to the true Intent and Meaning of this Act, the one Moiety thereof to the King's most Excellent Majesty, his Heirs and Successors, and the other Moiety thereof to any Person or Persons who shall sue for the same in any such Court of Record, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoign, Privilege, or Protection, nor more than one Imparllance shall be allowed: Provided always, That after the Expiration of the said Term of fourteen Years, the Right of printing or disposing of Copies shall return to the Authors thereof, if they are then living, for another Term of fourteen Years.

11. Provided also, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to any Book or Books heretofore composed, or printed or published in any Part of the said United Kingdom, nor to exempt or indemnify any Person or Persons whomsoever, from or against any Penalties or Actions, to which he, she, or they shall or may have become, or shall or may hereafter be liable for or on Account of the unlawful

No. 11.
41 G III. c. 107.

Booksellers, &c. in any Part of the United Kingdom, or British European Dominions, who shall print, re-print, or import, &c. any such Book without Consent of the Proprietor, shall be liable to an Action for Damages, and shall also forfeit the Books to the Proprietor, and 3d. per sheet. Half to the King, and Half to the Informer.

Authors have a second 14 Years' Term, if living.

Act shall not extend to Books already published,

No. 11.

41 G. III. c. 107

nor indemnify
against Penalties
under former Acts
in force at the
Union of Great
Britain & Ireland.
39 & 40 G. 3 c. 67.

Trinity College,
Dublin, shall for
ever have the sole
Right of printing
Books given or be-
queathed to them,
unless they are
given, &c. for a
limited Time only.

Penalty on Per-
sons printing such
Books the same as
under § 1.

To extend only
to Books printed
at the College
Press.

But the College
may sell their
Copy-Rights.

Booksellers, &c.
shall not be liable
to the Penalty of
3d per Sheet,

printing, re-printing, or importing such Book or Books, or the selling, publishing, or exposing the same to Sale, or the having the same in his or their Possession for Sale, contrary to the Laws and Statutes in force respecting the same, at the Time of the passing an Act in the Session of Parliament of the thirty-ninth and fortieth Year^{2d} of the Reign of his present Majesty, intitled, *An Act for the Union of Great Britain and Ireland*.

III. And whereas Authors have heretofore bequeathed, given, or assigned, and may hereafter bequeath, give, or assign, the Copies or Copy-Rights of and in Books composed by them, to or in Trust for the College of the Holy Trinity of *Dublin*; and, in and by their several Wills or other Instruments, have directed or may direct, that the Profits arising from the printing or re-printing such Books, shall be applied or appropriated as a Fund for the Advancement of Learning, and other beneficial Purposes of Education, within the College aforesaid: And whereas such useful Purposes will frequently be frustrated, unless the sole Right of printing and re-printing of such Books the Copies of which shall have been or shall be so bequeathed, given, or assigned as aforesaid, be preserved and secured to the said College in Perpetuity; be it therefore further enacted, That the said College shall, at their own Printing Press, within the said College, have for ever the sole Liberty of printing and re-printing all such Books as shall at any Time hereafter have been, or (not having been heretofore published or assigned) shall at any Time hereafter be bequeathed, or otherwise given or assigned by the Author or Authors of the same respectively, or the Representatives of such Author or Authors, to or in Trust for the said College for the Purposes aforesaid, unless the same shall have been bequeathed, given or assigned, or shall hereafter be bequeathed, given, or assigned for any Term of Years, or any other limited Term; any Law or Usage to the contrary thereof in anywise notwithstanding; and that if any Printer, Bookseller, or other Person whatsoever, shall, from and after the passing of this Act, unlawfully print, re-print, or import, or cause to be printed, re-printed, or imported, or knowing the same to be so unlawfully printed, re-printed, or imported, shall sell, publish, or expose to Sale, or cause to be sold, published, or exposed to Sale, or have in his or their Possession for Sale, any such last-mentioned Book or Books, such Offender or Offenders shall be subject and liable to the like Actions, Penalties, and Forfeitures as are herein-before mentioned and contained with respect to Offenders against the Copy-Rights of Authors and their Assigns: Provided nevertheless, That nothing in this Act shall extend to grant any exclusive Right to the said College of the Holy Trinity of *Dublin*, otherwise than so long as the Books or Copies belonging to the said College, are and shall be printed only at the Printing Press of the said College, within the said College, and for the sole Benefit and Advantage of the said College; and that if the said College shall delegate, grant, lease, or sell the Copy-Rights or exclusive Rights of printing the Books hereby granted, or any Part thereof, or shall allow, permit, or authorise any Person or Persons, or Bodies Corporate, to print or re-print the same, then the Privilege hereby granted shall become void and of no Effect, in the same Manner as if this Act had not been made; but the said College shall nevertheless have a Right to sell such Copies so bequeathed or given as aforesaid, in like Manner as any Author or Authors can or may lawfully do under the Provisions of this Act, or any other Act now in force.

IV. Provided also, and be it further enacted, That no Bookseller, Printer, or other Person whatsoever, shall be liable to the said Penalty of Three pence *per* Sheet, for or by reason of the printing, re-printing, importing, or selling of any such Book or Books, or the

having the same in his or their Custody for Sale, without the Consent of the Proprietor or Proprietors of the Copy-Right thereof as aforesaid, unless before the Time of the Publication of such Book or Books by the Proprietor or Proprietors thereof (other than the said College) the Right and Title of such Proprietor or Proprietors shall be duly entered in the Register Book of the Company of Stationers in London, in such Manner as hath been usually heretofore done by the Proprietors of Copies and Copy-Right in Great Britain; nor if the Consent of such Proprietor or Proprietors for the printing, re-printing, importing, or selling such Book or Books, shall be in like Manner entered; nor unless the Right and Title of the said College to the Copy-Right of such Book or Books as has or have been already bequeathed, given, or assigned to the said College, be entered in the said Register Book before the twenty-ninth Day of September, One Thousand Eight Hundred and One, and of all and every such Book or Books as may or shall hereafter be bequeathed, given or assigned as aforesaid, be entered in the said Register Book within the Space of two Months after any such Bequest, Gift, or Assignment shall have come to the Knowledge of the Provost of the said College; for every of which several Entries Sixpence shall be paid, and no more; which said Register Book shall at all Times be kept at the Hall of the said Company, and shall and may at all seasonable and convenient Times be resorted to and inspected by any Bookseller, Printer, or other Person, for the Purposes before mentioned, without any Fee or Reward; and the Clerk of the said Company of Stationers shall, when and as often as thereto required, give a Certificate under his Hand of such Entry of Entries, and for every such Certificate may take a Fee not exceeding Six-pence; and the said Clerk shall also, without Fee or Reward, within fifteen Days next after the thirty-first Day of December and the thirtieth Day of June in each and every Year, make or cause to be made, for the Use of the said College, a List of the Titles of all such Books, the Copy-Right to which shall have been so entered in the Course of the Half Year immediately preceding the said thirty-first Day of December and the thirtieth Day of June respectively, and shall upon Demand deliver the said Lists or cause the same to be delivered to any Person or Persons duly authorized to receive the same for and on Behalf of the said College.

V. Provided also, and be it further enacted, That if the Clerk of the said Company of Stationers for the Time being shall refuse or neglect to register or make such Entry of Entries, or to give such Certificate or Certificates, being thereunto respectively required by the Author or Authors, Proprietor or Proprietors of such Copies or Copy-Right, or by the Person or Persons to whom such Consent shall be given, or by some Person on his or their Behalf, in the Presence of two or more credible Witnesses, then such Party or Parties so refused, Notice being first duly given by Advertisement in the *London Gazette*, shall have the like Benefit as if such Entry of Entries, Certificate or Certificates, had been duly made and given; and the Clerk so refusing shall, for any such Offence, forfeit to the Author or Proprietor of such Copy or Copies, or to the Person or Person to whom such Consent shall be given, the Sum of twenty Pounds; or if the said Clerk shall refuse or neglect to make the List aforesaid, or to deliver the same to any Person duly authorized to demand the same, on Behalf of the said College, the said Clerk shall also forfeit to the said College the like Sum of twenty Pounds; which said respective Penalties shall and may be recovered in any of his Majesty's Courts of Record in the said United Kingdom, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoin, Privilege, or Protection, nor more than one Imparance shall be allowed.

No. 12.
41 G. III. c. 107.

unless the Title to the Copy Right be entered by the Proprietor, &c. at Stationers' Hall, London; nor if the Consent of the Proprietor be so entered.

Clerk of the Company shall give Certificates of Entries, and make a Half yearly List of the Books so entered for the Use of Trinity College.

If the Clerk refuses to make Entries, &c Parties may give Notice in the London Gazette, and the Clerk shall forfeit 20l.

No. 11.

41 G. III. c. 107.

Two additional Copies of Books entered at Stationers' Hall, shall be delivered there for the Use of the Libraries of Trinity College, and the King's Inns, Dublin.

VI. Provided also, and be it further enacted, That from and after the passing of this Act, in Addition to the nine Copies now required by Law to be delivered to the Warehouse-keeper of the said Company of Stationers, of each and every Book and Books which shall be entered in the Register Book of the said Company, one other Copy shall be in like Manner delivered for the Use of the Library of the said College of the Holy Trinity of *Dublin*, and also one other Copy for the Use of the Library of the Society of the King's Inns *Dublin*, by the Printer or Printers of all and every such Book and Books as shall hereafter be printed and published, and the Title to the Copy-Right whereof shall be entered in the said Register Book of the said Company; and that the said College and the said Society shall have the like Remedies for enforcing the Delivery of the said Copies, and that all Proprietors, Booksellers, and Printers, and the Warehouse-keeper of the said Company, shall be liable to the like Penalties for making Default in delivering the said Copies for the Use of the said College and the said Society, as are now in force with respect to the delivering or making Default in delivering the nine Copies now required by Law to be delivered in Manner aforesaid.

No Person shall import into any Part of the United Kingdom, for Sale, any Book first composed, &c. within the United Kingdom, and re-printed elsewhere.

Penalty on importing, selling, or keeping for Sale, any such Books: Forfeiture thereof, and also 10*l.* and Double the Value.

Books may be seized by Officers of Customs or Excise, who shall be rewarded.

Exceptions as to Books not having been printed in the United Kingdom for 80 Years, &c.

VII. And be it further enacted, That, from and after the passing of this Act, it shall not be lawful for any Person or Persons whomsoever to import or bring into any Part of the said United Kingdom of *Great Britain* and *Ireland* for Sale, any printed Book or Books, first composed, written, or printed, and published in any Part of the said United Kingdom, and re-printed in any other Country or Place whatsoever; and if any Person or Persons shall import or bring, or cause to be imported or brought for Sale any such printed Book or Books into any Part of the said United Kingdom, contrary to the true Intent and Meaning of this Act, or shall knowingly sell, publish, or expose to Sale, or have in his or their Possession for Sale, any such Book or Books, then every such Book or Books shall be forfeited, and shall and may be seized by any Officer or Officers of Customs or Excise, and the same shall be forthwith made Waste Paper; and all and every Person and Persons so offending, being duly convicted thereof, shall also, for every such Offence, forfeit the Sum of ten Pounds, and Double the Value of each and every Copy of such Book or Books which he, she, or they shall so import or bring, or cause to be imported or brought into any Part of the said United Kingdom, or shall knowingly sell, publish, or expose to Sale, or shall cause to be sold, published, or exposed to Sale, or shall have in his or their Possession for Sale, contrary to the true Intent and Meaning of this Act; and the Commissioners of Customs in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any Officer or Officers of Customs) and the Commissioners of Excise in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any Officer or Officers of Excise) shall also reward the Officer or Officers who shall seize any Books which shall be so made Waste Paper of, with such Sum or Sums of Money as they the said respective Commissioners shall think fit, not exceeding the Value of such Books; such Reward respectively to be paid by the said respective Commissioners, out of any Money in their Hands respectively arising from the Duties of Customs and Excise: Provided, That no Person or Persons shall be liable to any of the last mentioned Penalties or Forfeitures, for or by Reason or Means of the Importation of any Book or Books which has not been printed or reprinted in some Part of the said United Kingdom, within twenty Years next before the same shall be imported, or of any Book or Books re-printed abroad, and inserted among other Books or Tracts to be sold therewith in any Collection,

where the greatest Part of such Collection shall have been first composed or written abroad.

No. 11.
41 G. III. c. 107.

VIII. And be it further enacted, That if any Action or Suit shall be commenced or brought against any Person or Persons whomsoever, for doing or causing to be done any Thing in pursuance of this Act, the Defendants in such Action may plead the General Issue, and give the Special Matter in Evidence; and if upon such Action a Verdict shall be given for the Defendant, or the Plaintiff become nonsuited, or discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a Defendant in any Case by Law hath; and that all Actions, Suits, Bills, Indictments, or Informations, for any Offence that shall be committed against this Act, shall be brought, sued, and commenced within six Months next after such Offence committed, or else the same shall be void and of none Effect.

General Issue.

Limitation of Actions under this Act six Months.

No. 12.

54 George III. c. 56.—An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts. [18th May, 1814.]

WHEREAS by an Act passed in the Thirty-eighth Year of the Reign of his present Majesty, intituled *An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned*; the sole Right and Property thereof were vested in the original Proprietors, for a Time therein specified: And Whereas the Provisions of the said Act having been found ineffectual for the Purposes thereby intended, it is expedient to amend the same, and to make other Provisions and Regulations for the Encouragement of Artists, and to secure to them the Profits of and in their Works, and for the Advancement of the said Arts: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, every Person or Persons who shall make or cause to be made any new and original Sculpture, or Model, or Copy, or Cast of the Human Figure or Human Figures, or of any Bust or Busts, or of any Part or Parts of the Human Figure, clothed in Drapery or otherwise, or of any Animal or Animals, or of any Part or Parts of any Animal combined with the Human Figure or otherwise, or of any Subject being Matter of Invention in Sculpture, or of any Alto or Basso-Relievo representing any of the Matters or Things hereinbefore mentioned, or any Cast from Nature of the Human Figure, or of any Part or Parts of the Human Figure, or of any Cast from Nature of any Animal, or of any Part or Parts of any Animal, or of any such Subject containing or representing any of the Matters and Things hereinbefore mentioned, whether separate or combined, shall have the sole Right and Property of all and in every such new and original Sculpture, Model, Copy and Cast of the Human Figure and Human Figures, and of all and in every such Bust or Busts, and of all and in every such Part or Parts of the Human Figure,

54 Geo. III. c. 56.

38 G. 3, c. 1, § 1.

Sole Right and Property of all new and original Sculptures, Models, Copies, and Casts, vested in Proprietors for 14 Years.

No. 12.
54 Geo. III. c. 56.

Name and Date
affixed.

Works published
under Act, vested
in Proprietors for
fourteen Years.

Putting forth pirated
Copies or pirated
Casts, prosecuted.

Damages.
Double Costs.

Purchasers of
Copy-Right secured
in same.

Limitation of Actions.

clothed in Drapery or otherwise, and of all and in every such new and original Sculpture, Model, Copy and Cast, representing any Animal or Animals, and of all and in every such Work representing any Part or Parts of any Animal combined with the Human Figure or otherwise, and of all and in every such new and original Sculpture, Model, Copy and Cast of any Subject, being Matter of Invention in Sculpture, and of all and in every such new and original Sculpture, Model, Copy and Cast in Alto or Baso-Relievo, representing any of the Matters or Things hereinbefore mentioned, and of every such Cast from Nature, for the Term of Fourteen Years from first putting forth or publishing the same; provided, in all and every case, the Proprietor or Proprietors do cause his, her or their Name or Names, with the Date, to be put on all and every such new and original Sculpture, Model, Copy or Cast, and on every such Cast from Nature, before the same shall be put forth or published.

II. And be it further enacted, That the sole Right and Property of all Works, which have been put forth or published under the Protection of the said recited Act, shall be extended, continued to and vested in the respective Proprietors thereof, for the Term of fourteen Years, to commence from the Date when such last mentioned Works respectively were put forth or published.

III. And be it further enacted, That if any Person or Persons shall, within such Term of Fourteen Years, make or import, or cause to be made or imported, or exposed to Sale, or otherwise disposed of, any pirated Copy or pirated Cast of any such new and original Sculpture, or Model or Copy, or Cast of the Human Figure or Human Figures, or of any such Bust or Busts, or of any such Part or Parts of the Human Figure, clothed in Drapery or otherwise, or of any such Work of any Animal or Animals, or of any such Part or Parts of any Animal or Animals combined with the Human Figure or otherwise, or of any such Subject being Matter of Invention in Sculpture, or of any such Alto or Baso-Relievo representing any of the Matters or Things hereinbefore mentioned, or of any such Cast from Nature as aforesaid, whether such pirated Copy or pirated Cast be produced by moulding or copying from, or imitating in any way, any of the Matters or Things put forth or published under the Protection of this Act, or of any Works which have been put forth or published under the Protection of the said recited Act, the Right and Property whereof is and are secured, extended and protected by this Act; in any of the cases as aforesaid, to the Detriment, Damage or Loss of the original or respective Proprietor or Proprietors of any such Works so pirated; then and in all such cases the said Proprietor or Proprietors, or their Assignee or Assignees, shall and may, by and in a special Action upon the Case to be brought against the Person or Persons so offending, receive such Damages as a Jury on a Trial of such Action shall give or assess, together with Double Costs of Suit.

IV. Provided nevertheless, That no Person or Persons who shall or may hereafter purchase the Right or Property of any new and original Sculpture or Model, or Copy or Cast, or of any Cast from Nature, or of any of the Matters and Things published under or protected by virtue of this Act, of the Proprietor or Proprietors, expressed in a Deed in Writing signed by him, her or them respectively, with his, her or their own Hand or Hands, in the Presence of and attested by Two or more credible Witnesses, shall be subject to any Action for copying or making, or vending the same; any thing contained in this Act to the contrary notwithstanding.

V. Provided always, and be it further enacted, That all Actions to be brought as aforesaid, against any Person or Persons, for any Offence committed against this Act, shall be commenced within Six

Calendar Months next after the Discovery of every such Offence, and not afterwards.

No. 12.
54 Geo. III. c. 56.

Vt. Provided always, and be it further enacted, That, from and immediately after the Expiration of the said Term of Fourteen Years, the sole Right of making and disposing of such new and original Sculpture, or Model, or Copy, or Cast of any of the Matters or Things hereinbefore mentioned, shall return to the Person or Persons who originally made or caused to be made the same, if he or they shall be then living, for the further Term of Fourteen Years, excepting in the case or cases where such Person or Persons shall by Sale or otherwise have divested himself, herself or themselves, of such Right of making or disposing of any new and original Sculpture, or Model, or Copy, or Cast of any of the Matters or Things hereinbefore mentioned, previous to the passing of this Act.

Additional Term
of four ten Years,
in case Maker of
original Sculpture,
&c. shall be living

No. 13.

54 George III. c. 156.—An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copy-Right of printed Books, to the Authors of such Books, or their Assigns.

[29th July, 1814.]

WHEREAS by an Act, made in the Eighth Year of the Reign of her late Majesty Queen ANNE, intituled *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in Authors or Purchasers of such Copies, during the Times therein mentioned*, it was, among other Things provided and enacted, That Nine Copies of each Book or Books, upon the best Paper, that from and after the Tenth Day of April One Thousand Seven Hundred and Ten should be printed and published as in the said Act mentioned, or reprinted and published with Additions, should, by the Printer and Printers thereof, be delivered to the Warehousekeeper of the Company of Stationers for the Time being, at the Hall of the said Company, before such Publication made, for the Use of the Royal Library, the Libraries of the Universities of Oxford and Cambridge, the Libraries of the Four Universities in Scotland, the Library of *Sion College in London*, and Library of the Faculty of Advocates at *Edinburgh*; which said Warehousekeeper is by the said Act required to deliver such Copies for the Use of the said Libraries; and that if any Proprietor, Bookseller, or Printer, or the said Warehousekeeper, should not observe the Directions of the said Act therein, that then he or they so making Default in not delivering the said printed Copies, should forfeit, besides the Value of the said printed Copies, the Sum of Five Pounds for every Copy not so delivered; And whereas by an Act made in the Forty-first Year of the Reign of his present Majesty, intituled *An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copy-Right of printed Books to the Authors of such Books or their Assigns, for the Time therein mentioned*, it is amongst other Things provided and enacted, That in Addition to the Nine Copies required by Law to be delivered to the Warehousekeeper of the said Company of Stationers, of each and every Book and Book which shall be entered in the Register Books of the said Company, Two other Copies shall in like Manner be delivered for the Use of the Library of the College of the

54 G. III. c. 156.
8 Anne, c. 19, § 2

41 G. 3 (U. K.)
c. 107, § 6

No. 18. 'Holy Trinity, and the Library of the Society of the King's Inns in
 54 G. III. c. 156. 'Dublin, by the Printer and Printers of all and every such Book and
 'Books as should thereafter be printed and published, and the Title of
 'the Copy-Right whereof should be entered in the said Register
 'Book of the said Company: And whereas it is expedient that Copies
 'of Books hereafter printed or published, should be delivered to the
 'Libraries herein-after mentioned, with the Modifications that shall be
 'provided by this Act; May it therefore please your Majesty that it
 may be enacted; and be it enacted by the King's most Excellent Ma-
 jesty, by and with the Advice and Consent of the Lords Spiritual and
 Temporal, and Commons, in this present Parliament assembled, and
 by the Authority of the same, That so much of the said several Recited
 Acts of the Eighth Year of Queen Anne, and of the Forty-first Year
 of his present Majesty, as requires that any Copy or Copies of any
 Book or Books which shall be printed or published, or reprinted and
 published with Additions, shall be delivered by the Printer or Printers
 thereof to the Warehousekeeper of the said Company of Stationers, for
 the Use of any of the Libraries in the said Act mentioned, and as
 requires the Delivery of the said Copies by the said Warehousekeeper
 for the Use of the said Libraries; and as imposes any Penalty on such
 Printer or Warehousekeeper for not delivering the said Copies, shall be
 and the same is hereby repeated.

repeated.

Eleven printed
 Copies delivered
 on Demand with-
 in Twelve Months
 after Publication,
 for Use of Public
 Libraries.

II. And be it further enacted, That Eleven printed Copies of the
 Whole of every Book, and of every Volume thereof, upon the
 Paper upon which the largest Number or Impression of such Book
 shall be printed for Sale, together with Maps and Prints belonging
 thereto, which, from and after the passing of this Act, shall be
 printed and published, on Demand thereof being made in Writing to
 or left at the Place of Abode of the Publisher or Publishers thereof, at
 any Time within Twelve Months next after the Publication thereof,
 under the Hand of the Warehousekeeper of the Company of
 Stationers, or the Librarian or other Person thereto authorized by the
 Persons or Body Politic and Corporate, Proprietors or Managers of the
 Libraries following, *videlicet*, the British Museum, *Sion College*, the
Bodleian Library at Oxford, the *Public Library at Cambridge*, the
Library of the Faculty of Advocates at Edinburgh, the Libraries of
 the Four Universities of Scotland, *Trinity College Library*, and the
King's Inns Library at Dublin, or so many of such such Eleven
 Copies as shall be respectively demanded on Behalf of such Libraries
 respectively, shall be delivered by the Publisher or Publishers thereof
 respectively, within One Month after Demand made thereof in
 Writing as aforesaid, to the Warehousekeeper of the said Company of
 Stationers for the Time being; which Copies the said Warehousekeeper
 shall and he is hereby required to receive at the Hall of the said Com-
 pany, for the Use of the Library for which such Demand shall be
 made, within such Twelve Months as aforesaid; and the said Ware-
 housekeeper is hereby required, within One Month after any such
 Book or Volume shall be so delivered to him as aforesaid, to deliver
 the same for the Use of such Library: And if any Publisher, or the
 Warehousekeeper of the said Company of Stationers, shall not observe
 the Directions of this Act therein, that then he and they so making
 Default in not delivering or receiving the said Eleven printed Copies as
 aforesaid, shall forfeit, besides the Value of the said printed Copies,
 the Sum of Five Pounds for each Copy not so delivered or received,
 together with the full Costs of Suit; the same to be recovered by the
 Person or Persons, or Body Politic or Corporate, Proprietors or Man-
 agers of the Library for the Use whereof such Copy or Copies ought to
 have been delivered or received; for which Penalties and Value such
 Person or Persons, Body Politic or Corporate, is or are now hereby

Publishers, &c.
 neglecting.

Penalty.

authorized to sue by Action of Debt or other proper Action in any Court of Record in the United Kingdom.

No. 13.

24 G. III. c. 136.

III. Provided always, and be it further enacted, That no such printed Copy or Copies shall be demanded by or delivered to or for the Use of any of the Libraries hereinbefore mentioned, of the second Edition, or of any subsequent Edition of any Book or Books so demanded and delivered as aforesaid, unless the same shall contain Additions or Alterations: And in case any Edition after the First, of any Book so demanded and delivered as aforesaid, shall contain any Addition or Alteration, no printed Copy or Copies thereof shall be demanded or delivered as aforesaid, if a printed Copy of such Additions or Alterations only, printed in an uniform manner with the former Edition of such Book, be delivered to each of the Libraries aforesaid, for whose Use a Copy of the former Edition shall have been demanded and delivered as aforesaid: Provided also, that the Copy of every Book that shall be demanded by the *British Museum*, shall be delivered of the best Paper on which such Work shall be printed.

No Copies, of Second, &c. Edition, without Addition or Alteration, demanded;

Additions printed, and delivered separate.

Proviso for British Museum.

IV. And Whereas by the said recited Acts of the Eighth Year of Queen ANNE, and the Forty-first Year of His present Majesty's Reign, it is enacted, that the Author of any Book or Books, and the Assignee or Assigns of such Author respectively, should have the sole Liberty of printing and re-printing such Book or Books for the Term of Fourteen Years, to commence from the Day of first publishing the same, and no longer; and it was provided, that after the Expiration of the said Term of Fourteen Years, the Right of printing or disposing of Copies should return to the Authors thereof, if they were then living, for another Term of Fourteen Years: And Whereas as it will afford further Encouragement to Literature, if the Duration of such Copy-Right were extended in manner hereinafter mentioned; Be it further enacted, That, from and after the passing of this Act, the Author of any Book or Books composed and not printed and published, or which shall hereafter be composed, and be printed and published, and his Assignee or Assigns, shall have the sole Liberty of printing and reprinting such Book or Books for the full Term of Twenty-eight Years, to commence from the Day of first publishing the same, and also, if the Author shall be living at the End of that Period, for the Residue of his natural Life; and that if any Bookseller or Printer, or other Person whatsoever, in any Part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey, or Guernsey, or in any other Part of the British Dominions, shall, from and after the passing of this Act, within the Terms and Times granted and limited by this Act as aforesaid, print, reprint, or import, or shall cause to be printed, reprinted or imported, any such Book or Books, without the Consent of the Author or Authors, or other Proprietor or Proprietors of the Copy-Right of and in such Book and Books, first had and obtained in Writing; or, knowing the same to be so printed, reprinted or imported, without such Consent of such Author or Authors, or other Proprietor or Proprietors, shall sell, publish or expose to Sale, or cause to be sold, published or exposed to Sale, or shall have in his or their Possession for Sale, any such Book or Books, without such Consent first had and obtained as aforesaid, then such Offender or Offenders shall be liable to a Special Action on the Case, at the Suit of the Author or Authors, or other Proprietor or Proprietors of the Copy-Right of such Book or Books so unlawfully printed, reprinted or imported, or published or exposed to Sale, or being in the Possession of such Offender or Offenders for Sale as aforesaid, contrary to the true Intent and Meaning of this Act: And every such Author or Authors, or other Proprietor or Proprietors, shall and may, by and in such special Action upon the Case, to be so brought against such Offender or Offenders, in

B Anne, c. 19, § 1.
41 G. 3. (U. K.)
c. 107, sec. 1.

Instead of Copy-Right for fourteen Years, and contingently for fourteen more, Authors, &c. shall have twenty-eight Years' Copy-Right in Works, and for Residue of Life Booksellers, &c. in any Part of United Kingdom, or British Dominions, who shall print, &c. any Book, without Consent of Proprietor, liable to Action for Damages.

No. 13. 31 G. III. c. 156.	<p>any Court of Record in that Part of the said United Kingdom, or of the <i>British Dominions</i>, in which the Offence shall be committed, recover such Damages as the Jury on the Trial of such Action, or on the Execution of a Writ of Enquiry thereon, shall give or assess, together with Double Costs of Suit; in which Action no Wager of Law, Essoin, Privilege or Protection, nor more than One Imparance, shall be allowed; and all and every such Offender and Offenders shall also forfeit such Book or Books, and all and every Sheet being Part of such Book or Books, and shall deliver the same to the Author or Authors, or other Proprietor or Proprietors of the Copy-Right of such Book or Books; upon Order of any Court of Record in which any Action or Suit in Law or Equity shall be commenced or prosecuted by such Author or Authors, or other Proprietor or Proprietors, to be made on Motion or Petition to the said Court; and the said Author or Authors or other Proprietor or Proprietors shall forthwith damask or make Waste Paper of the said Book or Books and Sheet or Sheets; and all and every such Offender and Offenders shall also forfeit the Sum of Three pence for every Sheet thereof, either printed or printing, or published or exposed to Sale, contrary to the true Intent and Meaning of this Act; the one Moiety thereof to The King's Most Excellent Majesty, his Heirs and Successors, and the other Moiety thereof to any Person or Persons who shall sue for the same, in any such Court of Record, by Action of Debt, Bill, Plaint or Information, in which no Wager of Law, Essoin, Privilege or Protection, nor more than One Imparance shall be allowed: Provided always, that in <i>Scotland</i> such Offender or Offenders shall be liable to an Action of Damages in the Court of Session in <i>Scotland</i>, which shall and may be brought and prosecuted in the same manner in which any other Action of Damages to the like Amount may be brought and prosecuted there; and in such Action where Damages shall be awarded, Double Costs of Suit or Expences of Process shall be allowed.</p>
Penalty.	
Penalty.	
Offenders in Scotland.	
Within what Time Title of Books entered at Stationers' Hall.	<p>V. And, in order to ascertain what Books shall be from time to time published, be it enacted, That the Publisher or Publishers of any and every Book demandable under this Act, which shall be published at any time after the passing of this Act, shall within One Calendar Month after the Day on which any such Book or Books respectively shall be first sold, published, advertised or offered for Sale, within the Bills of Mortality, or within Three Calendar Months if the said Book shall be sold, published or advertised in any other Part of the United Kingdom, enter the Title to the Copy of every such Book, and the Name or Names, and Place of Abode of the Publisher or Publishers thereof, in the Register Book of the Company of Stationers in <i>London</i>, in such manner as hath been usual with respect to Books the Title whereof hath heretofore been entered in such Register Book, and deliver One Copy, on the best Paper as aforesaid, for the Use of the <i>British Museum</i>; which Register Book shall at all times be kept at the Hall of the said Company; for every of which several Entries the Sum of Two Shillings shall be paid; and no more; which said Register Book may at all seasonable and convenient times be resorted to and inspected by any Person; for which Inspection the Sum of One Shilling shall be paid to the Warehousekeeper of the said Company of Stationers; and such Warehousekeeper shall, when and as often as thereto required, give a Certificate under his Hand of every or any such Entry, and for every such Certificate the Sum of One Shilling shall be paid; and in case such Entry of the Title of any such Book or Books shall not be duly made by the Publisher or Publishers of any such Book or Books, within the said Calendar Month, or Three Months as the case may be, then the Publisher or Publishers of such Book or Books shall forfeit the Sum of Five Pounds, together with Eleven</p>
Copy for British Museum.	
Inspection of Register Book.	
Certificate.	
Title of Book not	

Times the Price at which such Book shall be sold or advertised, to be recovered, together with full Cost of Suit, by the Person or Persons, Body Politic or Corporate, authorized to sue, and who shall first sue for the same, in any Court of Record in the United Kingdom, by Action of Debt, Bill, Plaint or Information, in which no Wager of Law, Essoin, Privilege or Protection, nor more than One Imparance shall be allowed; Provided always, that in the case of Magazines, Reviews or other Periodical Publications, it shall be sufficient to make such Entry in the Register Book of the said Company, within One Month next after the Publication of the First Number or Volume of such Magazine, Review or other Periodical Publication: Provided always, that no Failure in making any such Entry shall in any manner affect any Copy-Right, but shall only subject the Person making Default to the Penalty aforesaid under this Act.

No. 13.
54 G. III. c. 156.
Proviso for Magazines, &c.

Proviso.

VI. And be it further enacted, That the said Warehousekeeper of the Company of Stationers shall from time to time and at all times, without any greater Interval than Three Months, transmit to the Librarian or other Person authorized on behalf of the Libraries before mentioned, correct Lists of all Books entered in the Books of the said Company, and not contained in former Lists; and that on being required so to do by the said Librarian or other authorised Person, or either of them, he shall call on the Publisher or Publishers of such Books, for as many of the said Copies as may have been demanded of them.

Warehouse-keeper of Stationers' Hall to transmit to Librarians Lists of Books entered; and call on Publisher for Copies.

VII. Provided always, and be it further enacted, That if any Publisher shall be desirous of delivering the Copy of such Book or Volume as aforesaid, as shall be demanded on Behalf of any of the said Libraries, at such Library, it shall and may be lawful for him to deliver the same at such Library, to the Librarian or other Person authorized to receive the same, (who is hereby required to receive and to give a Receipt in Writing for the same); and such Delivery shall, to all Intents and Purposes of this Act, be held as equivalent to a Delivery to the said Warehousekeeper.

Publishers to deliver Books at Library.

What deemed Delivery.

VIII. And whereas it is reasonable that Authors of Books already published, and who are now living, should also have the Benefit of the Extension of Copy-Right; be it further enacted, That if the Author of any Book or Books which shall not have been published Fourteen Years at the Time of passing this Act shall be living at the said Time, and if such Author shall afterwards die before the Expiration of the said Fourteen Years, then the Personal Representative of the said Author, and the Assignee or Assigns of such personal Representative, shall have the sole Right of printing and publishing the said Book or Books for the further Term of Fourteen Years after the Expiration of the First Fourteen Years: Provided that nothing in this Act contained shall affect the Right of the Assignee or Assigns of such Author to sell any Copies of the said Book or Books which shall have been printed by such Assignee or Assigns within the First Fourteen Years, or the Terms of any Contract between such Author and such Assignee or Assigns.

Authors of Books published, now living, to have Benefit of Extension of Copy-right.

Proviso.

IX. And be it also further enacted, That if the Author of any Book or Books which have been already published shall be living at the End of Twenty-eight Years after the First Publication of the said Book or Books, he or she shall for the Remainder of his or her Life have the sole Right of printing and publishing the same: Provided that this shall not affect the Right of the Assignee or Assigns of such Author to sell any Copies of the said Book or Books which shall have been printed by such Assignee or Assigns within the said Twenty-eight Years, or the Terms of any Contract between such Author and such Assignee or Assigns.

Authors living at End of 28 Years sole Right of Publication for Life

No. 13. X. Provided nevertheless, and be it further enacted, That all
54 G. III c 156. Actions, Suits, Bills, Indictments, or Informations for any Offence
Limitation of that shall be committed against this Act, shall be brought, sued and
Actions. commenced, within Twelve Months next after such Offence com-
mitted, or else the same shall be void and of no Effect.

PART III. CLASS II.

NAVIGATION, SHIP-OWNERS, AND MARINERS.*

No. 1.

38 Edward III. c. 6.—A Ship shall not be lost for a small Thing therein not customary.

ITEM come les niefz de plusours gentz de Roialme soient arestuz et tenuz come forfaitz par cause petite chose mise en lour dites niefz nient custumes dont les Seignurs du dites niefz sount mesconissantz est accorde et assentuz qe nul Seignur perde sa nief pur tiele petite chose mise dedeinz nient custumez del seszisme jout de Feverer proschein avenir en avant sanz sen ou notice de luy.

ITEM, Whereas the Ships of divers People of the Realm be arrested and holden forfeit, because of a little Thing put in their Ship not customary, whereof the Owners of the same Ships be ignorant; it is accorded and assented, That no Owner shall lose his Ship from the *fifteenth Day of February* next coming forth, for such a small Thing put within the Ship not customary, without his Knowledge. (1)

* Sixteenth.

* Some of the Acts included in this Class relate more particularly to Matters of official Regulation, and to a peculiar Branch of Trade, than those which fall within the general Plan of the Work—but are inserted on Account of their Importance, and the Frequency of their becoming the Subject of Discussion. But it is not proposed to advert to the more minute Regulations upon the Subject, as affected by modern Statutes, with respect to particular Places or Articles of Traffick. A full View of the Nature and Progress of the System connected with Statute 13 Charles II. commonly called the Navigation Act, down to the Year 1799, is contained in Mr. Reeve's History of the Law of Shipping and Navigation.

(1) It is stated, in Reeve's History of the Law of Shipping and Navigation, p. 269, that it seems now to be the prevailing Opinion, that this Statute is not repealed by subsequent Acts, however absolute in their Prohibition, and that it ought to have its Influence in construing Cases of Forfeiture; but that Stat. 27 Ed. III. c. 19, (which provides generally; that no Merchant or other shall lose or forfeit his Goods or Merchandize for the Trespass or Forfeiture of his Servant, if not done by the Command or Authority of his Master,) is not understood in the same Light. He adds, (what is proved by daily Practice,) that Instances frequently occur where Forfeitures arise from the Conduct of the Clerk, but to allow this as a Plea would open a Door to all Sorts of Fraud.

No. 2.

12 Charles II. c. 18.—An Act for the Encouraging and Increasing of Shipping and Navigation.

12 Car. II. c. 18.

No Goods shall be imported from the Plantations, but in English Ships.

5 El. c. 5.

FOR the Increase of Shipping and Encouragement of the Navigation of this Nation, wherein, under the good Providence and Protection of God, the Wealth, Safety and Strength of this Kingdom is so much concerned; Be it enacted by the King's most Excellent Majesty, and by the Lords and Commons in this present Parliament assembled, and by the Authority thereof, That from and after the First Day of December One Thousand Six Hundred and Sixty, and from thenceforward, no Goods or Commodities whatsoever shall be imported (1) into or exported out of any Lands, Islands, Plantations or Territories (2) to his Majesty belonging or in his Possession, or

(1) As to what shall be deemed an Importation, see several Opinions in Reeve's S. & N. p. 356, et seq. and the Case of the Procurator General v. Barrow, Note to 15 Charles II. c. 7, post. In the Case of the Eleanor, Edwards' Admiralty Reports, 135, Sir Wm. Scott said, "It is, I presume, an universal Rule, that the mere Act of coming into Port, though without breaking Bulk, is *prima facie* Evidence of an Importation. At the same Time, this Presumption may be rebutted; but it lies in the Party to assign the other Cause, and if the Cause assigned turns out to be false, the first Presumption necessarily takes place, and the fraudulent Importation must be fastened down upon him.—Real and irresistible Distress must be, at all Times, a sufficient Passport for human Beings, under any such Application of human Laws. It must be an urgent Distress—it must be something of great Necessity—the Danger must be such as to cause Apprehension in the Mind of an honest and firm Man. I do not mean to say, that there must be an actual, physical Necessity existing at the Moment—a moral Necessity would justify the Act; but there must be, at least, a moral Necessity. Again, where the Party justifies the Act upon the Plea of Distress, it must not be Distress which he has created himself, by putting on Board an insufficient Quantity of Provisions for such a Voyage, for the Distress is only a Part of the Mechanism of the Fraud, and cannot be set up as an Excuse for it; and in the next place, the Distress must be proved by the Claimant in a clear and satisfactory Manner."—See other Parts in this Case in Note to Stat. 26 Geo. III. c. 60, Sec. 8, post. See also, as to Importation, 1 Edwards' Appendix, E.

(2) In the Case of the Recovery, 6 Robinson, 345, Sir William Scott observes, that the Act is not limited by Considerations of what Territories belonged to Great Britain at the Time of passing it, but applies prospectively to future Acquisitions, as well as to our more ancient Possessions. Speaking of the East Indies he says, "It is well known that our Establishments in that Quarter of the World have stood on a very peculiar Footing, which it has been perhaps the Policy of this Country not to define with great Exactness. They may have assumed a different Character at different Times, and it may be very important in Effect, and very proper in Point of Principle, that the general Maxims of our Navigation System should be applied to them in their present State, although there might have been a greater Anomaly in practically applying them at a former Period. With regard to the first, he had always entertained the Notion, that they had not been hitherto so applied. But a Case occurred not many Years since, (*Wilson v. Marryat*, 8 T. R. 31.) which brought the Consideration of the Question in a distinct Form before the Courts of Common Law. After repeated Arguments and much Deliberation, the Court of King's Bench expressed an Opinion, that the Navigation Laws did extend to those Countries; and, in a Writ of Error, the Judgment of the King's Bench was affirmed, with a complete Adoption of the Doctrine laid down.—(1 B. & P. 432.) An Act of Parliament was afterwards passed, (37 Geo. III. c. 97, § 22, and c. 117,) to quiet the Alarm which had been occasioned by this Exposition of the Law, and to recognize, in general Terms,

which may hereafter belong unto or be in the Possession of his Majesty, his Heirs and Successors, in *Asia, Africa, or America* in any other Ship or Ships, Vessel or Vessels whatsoever, but in such Ships or Vessels as do truly and without Fraud belong only to the People of *England or Ireland*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, or are of the Build (3) of, and belonging to, any the said Lands, Islands, Plantations or Territories, as the Proprietors and right Owners thereof, and whereof the Master and Three Fourths of the Marines (4) at least are *English*; under the Penalty of the Forfeiture and Loss of all the Goods and Commodities which shall be imported into, or exported out of, any the aforesaid Places in any other Ship or Vessel, as also of the Ship or Vessel, with all its Guns, Furniture, Tackle, Ammunition and Apparel; (5) One Third Part thereof to his Majesty, his Heirs and Successors; One Third Part to the Governor of such Land, Plantation, Island or Territory, where such Default shall be committed, in case the said Ship or Goods be there seized, or otherwise that Third Part also to his Majesty, his Heirs and Successors;

No. 2.

12 Car. II. c. 18.

Penalty.
Explained 13 &
14 Car. 2 c. 11.
sec. 6.

the Policy of admitting foreign Vessels to a regulated Trade on certain Conditions, which the East India Company was empowered to impose." The Decision of the Case of the Recovery was, that the *Prize Court* of the Admiralty would not virtually take Cognizance of an Infraction of the Navigation Act, which is only a municipal Regulation in Persons not British Subjects, although with respect to a British Subject, in whom the Violation of the Laws of his own Country carries with it *malum in se*, it might be done.

The Case of *Wilson v. Marryat*, mentioned in the above Extract, did not turn immediately upon the Question whether the British Settlements in the East Indies were within the general Operation of the Navigation Act; but it being taken for granted that they were so, the whole Question in Discussion related to the Effect of a Treaty allowing such Trade to the Subjects of the United States of America.

(3) By 20 Geo. II. c. 45, Prize Ships, legally condemned, shall be considered as British built Ships.

(4) By 13 Geo. II. c. 3, § 1—2, the King is entitled, in Time of War, under certain Regulations, to permit trading Vessels to be manned with foreign Seamen, not exceeding Three-fourths of the Marines employed.

(5) In *Idle v. Vanneck*, Bunt. 232, the Barons of the Exchequer held, that Notice in the Register was not necessary to create a Forfeiture upon this Act, though, for a small Matter, they thought it hard that a Ship should be condemned. In *Gresby v. Palmer*, *n. ibid.* Reynolds, C. B. put the Point on this Distinction, whether Goods so brought were Part or not of the Cargo; and, therefore, if Mariners or Passengers privately bring over a small Parcel of Goods that is not to be looked upon as Part of the Cargo, and it would be hard the Ship should be forfeited for that. In *Mitchell v. Torup*, Parker 227, Lord Chief Baron Parker gives an elaborate Opinion, "That a Forfeiture on Section 4, in respect of an Importation of 221lb. of Tea, was not prevented from attaching by the Finding of the Jury, that they had been put on Board without the Knowledge, Privy, or Consent of the Master, Mate, or Owners." He observed, "that the Words of the Act in the First, Second, Third, and Fourth Sections were all equally negative, absolute, and prohibitory, they operate both on the Goods and the Ship, and there is not a Syllable that hints at the Privy or Consent of the Master, Mate, or Owners." "The Reason," he added, "of penning the Section in these strong Terms was, to prevent as much as possible its being evaded; for, if the Privy or Consent of the Master, Mate, or Owners had been made necessary, the Powers of the Act would have been defeated. In expounding Acts of Parliament, when Words are express, plain, and clear, they ought to be understood according to their genuine and natural Signification, unless by such Exposition a Contradiction or Inconsistency would arise by Reason of some subsequent Clause, from whence it might be inferred that the Intent of the Act was otherwise." He noticed the Distinction made by C. B. Reynolds, as to whether Goods were a Part of the Cargo or not which he recognized, but thought it did not apply to the Case before him, for the Quantity was not so small as to excuse the Forfeiture.

No. 2.
12 Car. II. c. 18.

and the other Third Part to him or them who shall (6) seize, inform or sue for the same in any Court of Record, by Bill, Information, Plaint or other Action, wherein no *Essoin*, *Protection* or *Wager of Law* shall be allowed; and all Admirals and other Commanders at Sea of any the Ships of War, or other Ship having Commission from his Majesty, or from his Heirs or Successors, are hereby authorised and strictly required to seize and bring in as Prize all such Ships or Vessels as shall have offended contrary hereunto, and deliver them to the Court of Admiralty, there to be proceeded against; and in case of Condemnation, One Moiety of such Forfeitures shall be to the Use of such Admirals or Commanders and their Companies, to be divided and proportioned amongst them according to the Rules and Orders of the Sea in case of Ships taken Prize; and the other Moiety to the Use of his Majesty, his Heirs and Successors.

Aliens shall not exercise the Occupation of Merchants or Factors in the Plantations.

Governors, &c. of Plantations to take an Oath for the Observation of the afore mentioned Clauses.

Explained and enforced by 7 & 8 W. 3, c. 22, sec. 4.

II. And be it enacted, That no Alien or Person not born within the Allegiance of our Sovereign Lord the King, his Heirs and Successors, or Naturalized, or made a Free Denizen, shall from and after the First Day of *February*, which will be in the Year of our Lord One Thousand Six Hundred and Sixty-one, exercise the Trade or Occupation of a Merchant or Factor in any of the said Places; upon Pain of the Forfeiture and Loss of all his Goods and Chattels, or which are in his Possession; one Third to his Majesty, his Heirs and Successors; one Third to the Governor of the Plantation where such Person shall so offend; and the other Third to him or them that shall inform or sue for the same in any of his Majesty's Courts in the Plantation where such Offence shall be committed: And all Governors of the said Lands, Islands, Plantations or Territories, and every of them, are hereby strictly required and commanded, and all who hereafter shall be made Governors of any such Islands, Plantations or Territories, by his Majesty, his Heirs or Successors, shall before their Entrance into their Government take a solemn Oath, to do their utmost, that every the aforementioned Clauses, and all the Matters and Things therein contained, shall be punctually and *bona fide* observed according to the true Intent and Meaning thereof: And upon Complaint and Proof made before his Majesty, his Heirs and Successors, or such as shall be by him or them thereunto authorised and appointed, that any the said Governors have been willingly and wittingly negligent in doing their Duty accordingly, that the said Governor so offending shall be removed from his Government.

III. And it is further enacted by the Authority aforesaid, That no Goods or Commodities whatsoever, of the Growth, Production or Manufacture of *Africa*, *Asia* or *America*, or of any Part thereof, or which are described or laid down in the usual Maps or Cards of those Places, be imported into *England*, *Ireland* or *Wales*, Islands of *Guernsey* and *Jersey*, or Town of *Berwick upon Tweed*, in any other Ship or Ships, Vessel or Vessels whatsoever, but in such as do truly and without Fraud belong only to the people of *England* or *Ireland*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, or of the Lands, Islands, Plantations or Territories in *Asia*, *Africa* or *America*, to his Majesty belonging, as the Proprietors and right Owners thereof, and wherof the Master, and Three Fourths at least of her Mariners are *English*; under the Penalty of the Forfeiture of all such Goods

For the Importation of Thrown Silk, see 2 W. & M. Sess. 1, c. 9.

(6) An Action of Detinue may be maintained upon this Act by a common Informer.—*Robert v. Wetherhead*, 12 Mod. 92. 1 Salk. 223, 5 Mod. 195, Comb. 361. On Trespass for taking a Ship and Plea that it was seized as forfeited under this Act, it is no Answer to state in the Replication that the Defendant, without any Sentence of Condemnation, disposed of the Ship for his own Use.—*Wilkins v. Despard*, 5 T. R. 112.

and Commodities, and of the Ship or Vessel in which they were imported, with all her Guns, Tackle, Furniture, Ammunition and Apparel; One Moiety to his Majesty, his Heirs and Successors; and the other Moiety to him or them who shall seize, inform or sue for the same in any Court of Record, by Bill, Information, Plaint or other Action, wherein no Essoin, Protection or Wager of Law shall be allowed.

IV. And it is further enacted by the Authority aforesaid, That no Goods or Commodities that are of Foreign Growth, Production or Manufacture, and which are to be brought into *England, Ireland, Wales*, the Islands of *Guernsey and Jersey*, or Town of *Berwick upon Tweed*, in *English*-built Shipping, or other Shipping belonging to some of the aforesaid Places, and navigated by *English* Mariners as aforesaid, shall be shipped or brought from any other Place or Places, Country or Countries, but only (7) from those of the said Growth, Production or Manufacture, or from those Ports where the said Goods and Commodities can only, or are, or usually have been, first shipped for Transportation, (8) and from none other Places or Countries; under the Penalty of the Forfeiture of all such of the aforesaid Goods as shall be imported from any other Place or Country contrary to the true Intent and Meaning hereof, as also of the Ship in which they were imported, with all her Guns, Furniture, Ammunition, Tackle and Apparel; one Moiety to his Majesty, his Heirs and Successors, and the other Moiety to him or them that shall seize, inform, or sue for the same, in any Court of Record, to be recovered as is before expressed.

V. [All Ling, Stockfish, &c. Oil, &c. Whale-fins, &c. imported, not caught in Vessels by the Proprietors themselves, &c. shall pay double Aliens Custom.]

VI. And be it further enacted by the Authority aforesaid, That from henceforth it shall not be lawful to any Person or Persons whatsoever, to load, or cause to be loaden and carried in any Bottom or Bottoms, Ship or Ships, Vessel or Vessels whatsoever, whereof any Stranger or Strangers-born (unless such as shall be Denizens or Naturalized) be Owners, Part-owners, or Master, and whereof Three Fourths of the Mariners at least shall not be *English*, any Fish, Victual, Wares, Goods, Commodities, or Things, of what Kind or Nature soever the same shall be, from One Port or Creek of *England, Ireland, Wales*, Islands of *Guernsey or Jersey*, or Town of *Berwick upon Tweed*, to another Port or Creek of the same, or of any of them; under Penalty for every one that shall offend contrary to the true Meaning of this Branch of this present Act, to forfeit all such Goods as shall be loaden and carried in any such Ship or Vessel, together

No. 2.

12 Car. II. c. 18.

No Goods of Foreign Growth or Manufacture shall be brought into *England*, &c. in *English* Ships, but only from the Places of their said Growth.

Altered by 7 Ann. c. 6, sec. 12, as to American Drugs.

Protestant Strangers are excepted by 10 & 11 W. 3, c. 24, § 13, and the Importation of Anchovies, &c. provided for by sec. 14.

No Goods to be loaded or carried from one Part of *England* to another in the Vessel of any Alien not denized, &c. The Penalty, 1 Salk. 225.

(7) Mr. Reeves, (p. 181.) after stating different Opinions which had been given upon the Subject, says, "Upon the whole it is judged not to be sufficient that the whole of the Voyage is performed in a British Ship, but it must be in the same Ship, for if trans-shipping be allowed, it would be very difficult to prove whether the former Voyage was performed in a legal Way, and the Provision might thus be easily evaded. However, where a Ship has suffered such Damage as to be unladen at some Port, and the Goods are put into another British Vessel, the Importation is always considered as a Continuation of the first Voyage. But this is a Case of Necessity, and it must be proved before the Importation is allowed.

(8) By 19 George III. c. 48, it is provided that this Section should not be construed to permit any Goods of the Growth or Production of *Africa, Asia*, or *America*, which shall be in any Degree manufactured in Foreign Parts, to be imported into Great Britain, &c. unless manufactured in the Country or Place of which they were the Growth and Production, or in the Place which such Goods and Commodities can be only or are first shipped, (leaving out usually, Reeves 170) and from no other Country or Place whatsoever.

No. 2
12 Car. II. c. 18.

with the Ship or Vessel; and all her Guns, Ammunition, Tackle, Furniture and Apparel; One Moiety to his Majesty, his Heirs and Successors, and the other Moiety to him or them that shall inform, seize, or sue for the same, in any Court of Record, to be recovered in Manner aforesaid.

VII. [Abatement in the Book of Rates to extend only where Three Parts of the Mariners be English.]

Goods of the
Growth or Manu-
facture of Muscovy
or Russia.

Explained by
13 & 14 Car. 2,
c. 11, sec. 23.
5 Mod. 193.

VIII. And it is further enacted by the Authority aforesaid, That no Goods or Commodities of the Growth, Production, or Manufacture of *Muscovy*, or of any the Countries, Dominions, or Territories to the Great Duke or Emperor of *Muscovy* or *Russia*, belonging, as also that no sort of Masts, Timber, or Boards, no foreign Salt, Pitch, Tar, Rosin, Hemp, or Flax, Raisins, Figs, Prunes, Olive Oils, no Sorts of Corn or Grain, Sugar, Pot-ashes, Wines, Vinegar, or Spirits called *Aqua-vite*, or Brandy-Wine, shall, from and after the First Day of April which shall be in the Year of our Lord One Thousand Six Hundred and Sixty-one, be imported into *England*, *Ireland*, *Wales*, or Town of *Berwick upon Tweed*, in any Ship or Ships, Vessel or Vessels whatsoever, but in such as do truly and without Fraud belong to the People thereof, or some of them, as the true Owners and Proprietors thereof, and whereof the Master and Three Fourths of the Mariners at least are *English*: And that no Currans nor Commodities of the Growth, Production, or Manufacture of any of the Countries, Islands, Dominions, or Territories, to the *Othoman* or *Turkish* Empire belonging, shall, from and after the First Day of September which shall be in the Year of our Lord One Thousand Six Hundred Sixty-one, be imported into any of the above-mentioned Places in any Ship or Vessel but which is of *English* built, and navigated as aforesaid, and in no other, except only such foreign Ships and Vessels as are of the Built of that Country or Place of which the said Goods are the Growth, Production, or Manufacture respectively, or of such Port where the said Goods can only be or most usually are, first shipped for Transportation, and whereof the Master and Three Fourths of the Mariners at least are of the said County or Place, under the Penalty and Forfeiture of Ship and Good, to be disposed and recovered as in the foregoing Clause.

Turkish Empire.

Frauds in conceal-
ing Aliens' Goods,
how to be prevent-
ed.

IX. Provided always, and be it hereby enacted by the Authority aforesaid, That, for the Prevention of the great Frauds daily used in colouring and concealing of Aliens' Goods, all Wines of the Growth of *France* or *Germany*, which, from and after the Twentieth Day of October One Thousand Six Hundred and Sixty, shall be imported into any the Ports or Places aforesaid, in any other Ship or Vessel than which doth truly and without Fraud belong to *England*, *Ireland*, *Wales*, or Town of *Berwick upon Tweed*, and navigated with the Mariners thereof, as aforesaid, shall be deemed Aliens' Goods, and pay all Strangers Customs and Duties to his Majesty, his Heirs and Successors, as also to the Town or Port into which they shall be imported; and that all sorts of Masts, Timber, or Boards, as also all foreign Salt, Pitch, Tar, Rosin, Hemp, Flax, Raisins, Figs, Prunes, Olive Oils, all Sorts of Corn or Grain, Sugar, Pot-ashes, Spirits commonly called *Brandy Wine* or *Aqua-Vite*, Wines of the Growth of *Spain*, the Islands of the *Canaries* or *Portugal*, *Madaira*, or *Western Islands*, and all the Goods of the Growth, Production, or Manufacture of *Muscovy* or *Russia*, which, from and after the First Day of April which shall be in the Year of our Lord One Thousand Six Hundred Sixty-one, shall be imported into any the aforesaid Places in any other than such Shipping, and so navigated, and all Currans and *Turkey* Commodities which from and after the First Day of September One Thousand Six Hundred Sixty-one shall be imported into any the Places aforesaid, in any other than *English*-built Shipping, and navigated as aforesaid, shall be deemed

Aliens Goods, and pay accordingly to his Majesty, his Heirs and Successors, and to the Town or Port into which they shall be imported. No. 2.
12 Car. II. c. 18.

X. [How to prevent Frauds in colouring and buying foreign Ships. See 13 & 14 Car. 2, c. 11, sec. 6. The Oath to be administered.]

XI. [Officers of the Customs not to allow any Privilege to any foreign-built Ship, until Certificate or Proof, &c. Altered by 6 Anne, c. 37, sec. 21.]

XII. Provided always, That this Act, or any Thing therein contained, extend not, or be meant, to restrain and prohibit the Importation of any the Commodities of the *Streights or Levant-Seas*, loaden in *English-built Shipping*, and whereof the Master and Three-fourths of the Mariners at least are *English*, from the usual Ports or Places for lading of them heretofore within the said *Streights or Levant-Seas*, though the said Commodities be not of the very Growth of the said Places. Proviso for Goods
of the Streights or
Levant.
In Part repealed
by 6 Geo. 1. c. 14.

XIII. Provided also, That this Act, or any Thing therein contained, extend not, or be meant, to restrain the importing of any *East India Commodities* loaden in *English-built Shipping*, and whereof the Master and Three-fourths of the Mariners at least are *English*, from the usual Place or Places for lading of them in any Part of those Seas, to the Southward and Eastward of *Cabo bona Esperanza*, although the said Ports be not the very Places of their Growth. East India Com-
modities.

XIV. Provided also, That it shall and may be lawful to and for any of the People of *England, Ireland, Wales, Islands of Guernsey or Jersey*, or Town of *Berwick-upon-Tweed*, in Vessels or Ships to them belonging, and whereof the Master and Three-fourths of the Mariners at least are *English*, to load and bring in from any of the Ports of Spain or Portugal, or Western Islands, commonly called *Azores or Madera or Canary Islands*, all Sorts of Goods or Commodities of the Growth, Production or Manufacture of the Plantations or Dominions of either of them respectively. Proviso for
Goods imported
from Spain, Portu-
gal, Azores, Ma-
dera, or Canary
Islands.

XV. Provided, That this Act, or any Thing therein contained, extend not to Bullion, nor yet to any Goods taken, or that shall be *bona fide* taken, by way of Reprisal by any Ship or Ships belonging to *England, Ireland, or Wales, Islands of Guernsey or Jersey*, or Town of *Berwick-upon-Tweed*, and whereof the Master and Three-fourths of the Mariners at least are *English*, having Commission from his Majesty, his Heirs or Successors. Proviso for Bul-
lion, and Goods
taken by way of
Reprisal.

XVI. [Proviso concerning Goods of Scotland. Goods of Russia.]

XVII. [The Duty payable upon Goods in French Ships. Enforced by 13 & 14 Car. 2, c. 11, sec. 24. Enlarged as to Rice and Mellosses by 3 & 4 Anne, c. 5, sec. 12, and as to Copper Ore by 8 Geo. 1, c. 18, sec. 22.]

XVIII. And it is further enacted by the Authority aforesaid, That from and after the First Day of April, which shall be in the Year of our Lord One Thousand Six Hundred Sixty-one, no Sugars, Tobacco, Cotton-Wool, Indigos, Ginger, Fustick, or other Dying-Wood, of the Growth, Production or Manufacture of any *English Plantations in America, Asia, or Africa*, shall be shipped, carried, conveyed or transported from any of the said *English Plantations*, to any Land, Island, Territory, Dominion, Port or Place whatsoever, other than to such other *English Plantations* as do belong to his Majesty, his Heirs and Successors, or to the Kingdom of *England or Ireland*, or Principality of *Wales*, or Town of *Berwick-upon-Tweed*, there to be laid on Shore, under the Penalty of the Forfeiture of the said Goods, or the full Value thereof, as also of the Ship, with all her Guns, Tackle, Apparel, Ammunition and Furniture; the One

No. 2. Moieity to the King's Majesty, his Heirs and Successors, and the other
 12 Car. II. c. 18. Moieity to him or them that shall seize, inform or sue for the same in any Court of Record, by Bill, Plaint or Information, wherein no Essoin, Protection or Wager of Law shall be allowed.

Ships of England, sailing in any English Plantations, shall be bound to bring Goods there loaded into England, &c.

Further Provisions relating to such Bonds,
 7 & 8 W. 3, c. 22, sec. 13.
 8 Anne, c. 13, sec. 23.

Repeated as to Ireland, by
 22 & 23 Car. 2, c. 26, sec. 11.
 22 & 23 Car. 2, c. 16, sec. 12.

XIX. And be it further enacted by the Authority aforesaid, That for every Ship or Vessel, which from and after the Five and Twentieth Day of December, in the Year of our Lord One Thousand Six Hundred and Sixty shall set sail out of or from England, Ireland, Wales, or Town of Berwick-upon-Tweed, for any English Plantation in America, Asia, or Africa, sufficient Bond shall be given with One Surety to the Chief Officers of the Custom-house of such Port or Place from whence the said Ship shall set sail, to the Value of One Thousand Pounds, if the Ship be of less Burthen than One Hundred Tons; and of the Sum of Two Thousand Pounds, if the Ship be of greater Burthen: That in Case the said Ship or Vessel shall load any of the said Commodities at any of the said English Plantations, that the same Commodities shall be by the said Ship brought to some Port of England, Ireland, Wales, or to the Port or Town of Berwick-upon-Tweed, and shall there unload and put on Shore the same, the Danger of the Seas only excepted: And for all Ships coming from any other Port or Place to any of the aforesaid Plantations, who by this Act are permitted to trade there, that the Governor of such English Plantations shall, before the said Ship or Vessel be permitted to load on Board any of the said Commodities, take Bond in Manner and to the Value aforesaid, for each respective Ship or Vessel; that such Ship or Vessel shall carry all the aforesaid Goods that shall be laden on Board in the said Ship to some other of his Majesty's English Plantations, or to England, Ireland, Wales, or Town of Berwick-upon-Tweed: And that every Ship or Vessel which shall load or take on Board any of the aforesaid Goods, until such Bond given to the said Governor, or Certificate produced from the Officers of any Custom-house of England, Ireland, Wales, or of the Town of Berwick, that such Bonds have been there duly given, shall be forfeited, with all her Guns, Tackle, Apparel and Furniture, to be employed and recovered in Manner as aforesaid; and the said Governors and every of them shall Twice in every Year, after the First Day of January, One Thousand Six Hundred and Sixty, return true Copies of all such Bonds by him so taken, to the Chief Officers of the Custom in London. [Confirmed by 13 Car. 2, Stat. 1, c. 14.]

No. 3.

13 & 14 Charles II. c. 11.—An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs.

13 & 14 Car. II.
 c. 11.
 Account to be given of foreign Ships.
 12 Car. 2, c. 18.

VI. And for the better Increase of Shipping and Navigation, be it further enacted, That the Collectors and other Officers of his Majesty's Customs in all the Ports of England, shall forthwith give an Account unto the Collector and Surveyor in the Port of London, (appointed by his Majesty for all Duties and Matters relating to a late Act, intituled, *An Act for increasing and encouraging of Shipping and Navigation*,) of all foreign-built Ships in their Ports, owned and belonging to the People of England, of what Build and Burthen they are, for which Certificates have been made according to the said Act, and that the said Collector and Surveyor shall make a true and perfect List of all such Ships stayed under their Hands, and transmit the same into his Majesty's Court of Exchequer, on or before the Month of December in

the Year One Thousand Six Hundred Sixty and Two, there to remain upon Record: And that no foreign-built Ship (that is to say) not built in any of his Majesty's Dominions of *Asia, Africa, or America*, or other than such as shall (*bona fide*) be bought before the First of October, One Thousand Six Hundred Sixty and Two next ensuing, and expressly named in the said List, shall enjoy the Privilege of a Ship belonging to *England or Ireland*, although owned or manned by *English*, (except such Ships only as shall be taken at Sea by Letters of Mart or Reprisal, and Condemnation made in the Court of Admiralty, as lawful Prize) but all such Ships shall be deemed as Aliens Ships, and be liable unto all Duties that Aliens Ships are liable unto by virtue of the said Act for Increase of Shipping and Navigation.

13 & 14 Car. II.
c. 14.

Foreign-built Ships
not to have Privi-
lege, &c.

XXVIII. And be it further enacted, That all Actions, Suits and Informations, to be had and commenced upon the Act *For encouraging and increasing of Shipping and Navigation*, or any Clause or Article therein, may be entered and prosecuted in his Majesty's Court of Exchequer at *Westminster*; That upon all such Suits and Informations to be brought upon the Act of Tonnage and Poundage, and the Act aforesaid, or any other Act or Statute concerning the Importation of Goods or Merchandize from the Parts beyond the Seas, if the Property thereof be claimed by any Person or Persons as the Importer thereof; in such Case *Onus Probandi* shall lie upon the Owner or Claimer thereof.

12 Car. 2, c. 18.

Claimers to give
Security of 30l.
&c.

8 Anne, c. 7,
sec. 63.

Onus Probandi.

XXIX. Provided, That in case the Seizure or Information shall be made upon any Clause, or Thing, contained in the late Act, intituled, *An Act for the encouraging and increasing of Shipping and Navigation*, that then the Defendant or Defendants shall on his or their Request have a Commission out of the High Court of Chancery to examine Witnesses beyond the Seas, and have a competent Time allowed for the Return thereof, before any Trial shall be had upon the Case, according to the Distance of Place where such Commission or Commissions are to be executed, and that the Examination of Witnesses so returned, shall be admitted for Evidence in Law at the Trial, as if it had been given *Viva voce* by the Examinee in Court; any Law, Statute or Usage to the contrary in any wise notwithstanding.

12 Car. 2, c. 18.

Commission and
Time to examine
Witnesses.

No. 4.

15 Charles II. c. 7.—An Act for the Encouragement of Trade.

49.

' V. And in regard his Majesty's Plantations beyond the Seas are inhabited and peopled by his Subjects of this his Kingdom of *England*, for the Maintaining a greater Correspondence and Kindness between them, and keeping them in a firmer Dependence upon it, and rendering them yet more beneficial and advantageous unto it in the further Employment and Increase of *English Shipping and Seamen*, Vent of *English Woollen* and other Manufactures and Commodities, rendering the Navigation to and from the same more safe and cheap, and making this Kingdom a Staple, not only of the Commodities of those Plantations, but also of the Commodities of other Countries and Places, for the Supplying of them; and it being the Usage of other Nations to keep their Plantations Trade to themselves:

15 Car. II. c. 7.

Plantations be-
yond the Seas.

VI. Be it enacted, and it is hereby enacted, That from and after the five and twentieth Day of March One Thousand Six Hundred Sixty-four, no Commodity of the Growth, Production or Manufacture of *Europe*, shall be imported into any Land, Island, Plantation, Colony,

Commodities of
the Growth & Ma-
nufacture of Eu-
rope, how to be
imported in Eng-
lish built Shipping.

No. 4.
15 Car. II. c. 7.

Repealed as to
Irish Linen by
3 & 4 Anne, c.
8, sec. 1.
13 & 14 Car. 2,
c. 11.

Penalty.

Territory or Place to his Majesty belonging, or which shall hereafter belong unto or be in the Possession of his Majesty, his Heirs and Successors, in *Asia*, *Africa*, or *America* (*Tangier* only excepted) but what shall be *bona fide*, and without Fraud, laden and shipped in *England*; *Wales*, or the *Town of Berwick upon Tweed*, and in *English* built Shipping, or which were *bona fide* bought before the first Day of *October* One Thousand Six Hundred Sixty and Two, and had such Certificate thereof as is directed in one Act passed the last Sessions of this present Parliament, intituled, *An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs*; and whereof the Master and three fourths of the Mariners at least are *English*, and which shall be carried directly thence to the said Lands, Islands, Plantations, Colonies, Territories or Places, and from no other Place or Places whatsoever; any Law, Statute or Usage to the contrary notwithstanding; under the Penalty of the Loss of all such Commodities of the Growth, Production or Manufacture of *Europe*, as shall be imported into any of them from any other Place whatsoever, by Land or Water; and if by Water, of the Ship or Vessel also in which they were imported, with all her Guns, Tackle, Furniture, Ammunition and Apparel; one third Part to his Majesty, his Heirs and Successors; one third Part to the Governor of such Land, Island, Plantation, Colony, Territory or Place, into which such Goods were imported, if the said Ship, Vessel or Goods be there seized or informed against and sued for; or otherwise that third Part also to his Majesty, his Heirs and Successors; and the other third Part to him or them who shall seize, inform or sue for the same in any of his Majesty's Courts in such of the said Lands, Islands, Colonies, Plantations, Territories or Places where the Offence was committed, or in any Court of Record in *England*, by Bill, Information, Plein or other Action, wherein no *Essoin*, Protection or Wager of Law shall be allowed.

Salt for Fisheries.

VII. Provided always, and be it hereby enacted by the Authority aforesaid, That it shall and may be lawful to ship and lade in such Ships, and so navigated, as in the foregoing Clause is set down and expressed, in any Port of *Europe*, Salt for the Fisheries of *New-England* and *Newfoundland*, and to ship and lade in the *Madeira's* Wines of the Growth thereof, and to ship and lade in the Western Islands of *Azores* Wines of the Growth of the said Islands, and to ship and take in *Servantia* or *Horses* in *Scotland* or *Ireland*, and to ship or lade in *Scotland* all Sorts of Victual of the Growth or Production of *Scotland*, and to ship or lade in *Ireland* all Sorts of Victual of the Growth or Production of *Ireland*, and the same to transport into any of the said Lands, Islands, Plantations, Colonies, Territories or Places; any Thing in the foregoing Clause to the contrary in any wise notwithstanding. (1)

13 G. 1, c. 5.

Prevention of
Frauds

VIII. And for the better Prevention of Frauds, be it enacted, and it is hereby enacted, That from and after the five and twentieth Day of *March* One Thousand Six Hundred Sixty and Four, every Person or Persons, importing by Land any Goods or Commodities whatsoever into any of the said Lands, Islands, Plantations, Colonies, Territories or Places, shall deliver to the Governor of such Land, Island, Plantation, Colony, Territory or Place, or to such Person or Officer as shall be by him therunto authorized and appointed, within four and twenty Hours after such Importation, his and their Names and Surnames, and a true Inventory and Particulars of all such Goods and

(1). The following Note was taken by the Editor at the Hearing of the Case, and the Observations at the Close of it were added recently afterwards, for the Purpose of being inserted in a small Collection (then intended to be published) of Cases in the Courts of Doctors' Commons; but which Intention, in consequence of the Advice of those best competent to form a Judgment of the probable Reception of such a Publication, was not carried into effect

Commodities: And no Ship or Vessel coming to any such Land, Island, Plantation, Colony, Territory or Place, shall lade or unlade any Goods or Commodities whatsoever, until the Master or Commander of such Ship or Vessel shall first have made known to the Governor of

No. 4.
15 Car. II. c. 7.

Further provided
for by
7 & 8 W. 3. c.
22, sec. 5.

The Case of Wright and Netherwood, inserted in Notes to 2 Salk. and ante p. 247, would also have formed a Part of the intended Publication:—

14th May, 1793.

IN THE COURT OF DELEGATES,

Before MR. JUSTICE BULLER,
MR. JUSTICE HEATH,
DR. BATTEN, and
DR. ARNOLD.

The PROCURATOR-GENERAL against BARROW.

This Case arose in the Seizure of the Ship "Two Friends" and Fifteen Pipes of Madeira Wine, under the Authority of Stat. 15 Charles II. c. 7, Sections 5, 6, 7.

The Vessel in Question having been seized as forfeited at Jamaica, a Claim was made there which stated—

That she sailed from Lancaster for Jamaica with dry Goods, Part of which were to be landed at Madeira, another Part at St. Eustatius, and the Residue to be carried into Jamaica.

That she stopped at Madeira and left some of the dry Goods there, and took on Board Twenty-five Casks of Madeira Wine, which were consigned to Order at St. Eustatius or elsewhere. Certain Consignees at St. Eustatius were to take so much of the Wine as they thought that Master required; and the Rest was to go on to Jamaica. Those Consignees only took Ten Casks, and the Vessel proceeded to Jamaica with the Rest which had not been landed. The Master there delivered his Papers, and made a Report of the Wine.

The Facts of this Claim were admitted, but the Judge of the Vice-Admiralty Court decreed the Ship and Wine to be forfeited.

The Admiralty Court of Great Britain reversed the Sentence, and the Case now came on upon an Appeal from that Judgment of Reversal.

Dr. LAWRENCE, on behalf of the Respondents, stated the Case; and observed, that it arose upon a Fact which was very frequent, and now first called in question. That no more was intended to be landed at St. Eustatius than the Consignees there should require, and the Rest remained Water-bound the whole Way. That this Practice had always been permitted, and in the present Instance was, with respect to the dry Goods, authorized by the Custom house at Lancaster; and there was nothing attached upon the Madeira to which they were not equally liable. That the Madeira was not an European Commodity—that the Articles mentioned in the 7th Section were not required to be directly carried; but if they were, this Wine actually was carried directly, and there was no Pretence to impute Fraud.

The King's Advocate General (Sir Wm. Scott) submitted to the Court, that, according to the Facts stated, a Forfeiture was incurred. The Case was then argued as follows:—

FOR THE RESPONDENTS.

Mr. HARDINGE.—In this Case it is only necessary to read and see in order to judge whether there is any Thing in the Act, particularly in the Exception which subjects the Wine and Ship to Forfeiture.

The Ship left Madeira, having taken on Board Twenty-five Pipes of Wine; it proceeded to St. Eustatius, where so much as certain Consignees should require was to be landed, and the Rest was to be carried on. Only Ten Casks were taken, the others were Water-bound, and the Ship never parted with them. There is no Pretence to impute any Fraud.

The alleged Ground of Seizure is, that this is not Wine imported from Madeira to Jamaica, so as to be safe under the excepting Clause. The Thing is, that it did not go directly, but stopped at another Place, and is therefore forfeitable. But Madeira Wine is introduced under an Exception, in which there is not a Syllable to require that it shall be carried directly from Madeira to the British Colonies. If it had broke the Continuity of the Voyage, and had

No. 4.
15 Car. II. c. 7.

such Land, Island, Plantation, Colony, Territory or Place, or such other Person or Officer as shall be by him thereunto authorized and appointed, the Arrival of the said Ship or Vessel, with her Name, and the Name and Surname of her Master or Commander, and have shewn

been landed in St. Eustatius, still it would have been within the Exception, the Meaning of which is only, that it shall be taken from Madeira as the *Terminus a quo*, and go to the other Places as the *Termini ad quos*. If that is not to be considered as the Construction of so strict an Act of Parliament, intended to operate as a Qualification, I contend, that there is a direct Importation from Madeira. The Commodity remains on Board from Madeira to Jamaica; and there is no Pretence that there was any landing, or Intention to land it at St. Eustatius—it was to be in the Option of the Consignees how much should be landed there—the Remainder was to be taken as if originally destined for Jamaica, as much as if the Ship had stopped at St. Eustatius for any other Purpose. There seems no Occasion within the Meaning of the Act that the Ship should not touch at any intermediate Place. It should come originally from Madeira, and this is the fair Interpretation.

Dr. LAWRENCE.—I shall slightly trace the History of these Acts. This is an Act which immediately followed the Navigation Act, and went upon the same Grounds. The Object was to secure to this Country the carrying Trade—that is laid down in the very remarkable Preamble. It then lays down Directions respecting the Carriage of European Goods—next follows the Penalty of the Goods and Ship. As to what follows, it is provided to be lawful to lade (*inter alia*) at Madeira Wine of the Growth thereof, in such Ships so navigated.

It is, only by the Words, "in such Ships so navigated," that the former Part operates upon this. It would be more fair to refer it to what is required by the general Navigation Act, and adopted in the preceding Clause. That is not only the Interpretation which an unlearned Man would put upon it, but is the Exposition of the Legislature, in the 22d and 23d Charles II. c. 26, made to supply some Omissions, particularly an Omission to repeal the Word *Ireland* in one Clause of the Navigation Act, and to require a Bond to land in England. Sec. 10.—The Act refers to this Preamble, recites it at length, and states that it was therefore enacted that no Goods or Commodities of Europe should be carried into any the Plantations but what should be laden and shipped in England, in English-built Ships or Ships made free, and navigated with English according to an Act of Parliament in that behalf. This Act, which is nearly contemporary, is the best Interpretation of the Words *so navigated*. According to that Interpretation, Nothing requires a direct Voyage from Madeira to Jamaica in the same Manner as is required with respect to European Goods. The Object was to prevent Frauds, by other Nations becoming the Factors and Merchants for the Plantations, by taking European Goods there. It was not necessary for that Purpose to extend the Provisions farther. In Point of Practice, Goods have been carried in this Manner without Interruption.

There was a Period in which the Legislature was anxious to prevent Frauds in the Commerce with the West Indies. Sec. 30.—The 4th George III. c. 15, is the next Act containing any Clause similar to the preceding. A Fraud had been practised in the mean Time by taking in lading at other European Ports, and coming here for small Parcels of Goods, and then smuggling the Goods from the West of Europe. Therefore it is enacted, that no Vessel shall be chartered or sent to any Plantation, &c. unless the whole Cargo shall be *donee* laden in this Kingdom, with Power for the Officers of the Customs to stop any British Ships or Vessels arising from any Part of Europe within two Miles of any Plantation, and to seize any Goods for which the Master shall not produce a Cocket or Clearance, certifying that the same were laden in Great Britain. Then comes an Exception similar to that at present under Consideration, and almost word for word the same, in which the Word *directly* is not contained. This is an Act in *post materia*. This is the first Question of the Kind that has been brought forward in the Course of a Hundred and Thirty Years. In the Case of the Columbus a Question arose something similar. Some Madeira had a Permit to land at Tobago, but was not landed. It was contended, that because the Master might have been compelled to land it there was an actual Importation and Re-exportation. That Case was stronger

to him that she is an *English* built Ship, or made good by producing such Certificate, as aforesaid; that she is a Ship or Vessel *bona fide* belonging to *England, Wales*, or the Town of *Berwick*, and navigated with an *English* Master, and three fourth Parts of the Mariners at least

No. 4.
15 Car. II. c. 7.

than the Present, in which there was no Permit to land. There were two other Offences imputed in that Case; but the Judge of the Admiralty Court held, that no Forfeiture was incurred: The Case being removed before the Delegates, was given up by the Officers of the Crown under a Protest, that there were Points upon which they would not on future Occasions hold themselves bound; but they did not state what those Points were.

This is the first Question which comes before the Court for regular Decision; and the Point is, whether the Commodity falls within the Penalty for not carrying directly, and then, whether it was not carried directly. Nothing in the Clause attaches such Penalty. The Object of the Clause does not require any Thing of the Kind. So *navigated*, the only Words at all bearing upon it by other Acts in *pari materia*, mean, navigated according to the Navigation Act.

It would be difficult to shew how the European Goods should not be confiscated, and the Madelta Wine should. Is there any Thing which fairly varies the one from the other? The Court are called upon to say, that a contingent Intention to land at St. Eustatius is a positive Intention without any Act to carry it into Execution; and to prevent the usual contingent Supply of Countries at amity with Great Britain, and impede the Navigation of this Country under an Act intended to promote it. There is Nothing in this Case to fix an Importation and Re-exportation; if there was, it would be for the other Side to shew it. On the contrary, they admit the Facts of the Claim to be true.

Nothing was done at the Custom-house. In foreign Islands they may send in to enquire the State of the Market, and then send to the Custom-house if they think proper. Here there was no Act, nor any Thing more than a mere Intention, which was to land what the Consignees there required, which cannot be called a real Importation, any more than there was an Importation of the dry Goods, which is not pretended.

The Consequences of a Judgment of Forfeiture would be to check a Trade which has grown up since the Time of the Act, which is highly advantageous to this Country—employs much Shipping. There is no public Utility to promote, or Fraud to prevent, by such a Regulation; and the Court will rather assist than destroy the Course of Trade, if they can fairly and without Violence to the Act.

As this Question is brought on so long after the Act, there is a fair Ground to apply for Costs. The Vessel having been improperly detained and dragged through all the Courts, the Value of it is not so much as the Costs incurred. If Costs are not given, a Number of small Vessels will be seized on groundless Pretences; and the Owners will rather abandon their Property than go to the Expence of Decision after Decision with great anxiety and delay.

Dr. SWANBY.—The Questions in this Case are very few. The Ship was incontestably navigated by British Subjects according to the Navigation Act. The Captain duly reported the dry Goods, and delivered his Copies of them, and a Manifest of the Wine. He clearly acted *bona fide*, and there is no Ground to impute an Intent to evade the Law.

Neither the Words of the Act, nor any fair Interpretation of it, prohibit calling at intermediate Ports with Madeira Wine on Board. The other Side must resort to a forced Implication.

The 6th Section contains a Prohibition in certain Cases. The next Section gives a particular Permission. The Word *directly* does not form a Part of that, either as applicable to Salt, Madeira, or any other Commodity mentioned in it. The Object was to secure an Importation in British Ships, and Nothing more. But if it were otherwise, Nothing less than an actual landing would be a Deviation from the Act.

The Practice of the Revenue is in our favour. There may have been Opinions to the contrary, but those do not contravene the Law. The only Case upon the Subject is that of the *Columbus*, one of the Grounds in which is decisive. The Decision in the Court of Admiralty upon that Case was affirmed in the Delegates by Consent. The only difference between the Cases

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Englishmen, and have delivered to such Governor or other Person or Officer a true and perfect Inventory or Invoice of her Lading, together with the Place or Places in which the said Goods were laden or taken into the said Ship or Vessel; under the Pain of the Loss of the Ship

is, that in that a Permit was obtained to land the whole, whereas in the Present it was never designed to land more than the Consignees in St. Eustatius should think fit. It was there said, that Tobago made a *medius Terminus*, and two Voyages of what the Legislature only intended that there should be one. But the Point was over-ruled by the Court.

Courts of Justice will be cautious against extending Penal Laws by Implication. It is contended that they will not carry the Law into Execution, but they do not sit to repair Defects.

The Clause of Forfeiture is expressly confined to the Produce of Europe. Madeira Wine is not such. If, by Construction, the second Clause related to the first, there would be no Forfeiture under the first, unless an African Island is also to taken as European by Implication.

But if the Word *directly* were in the last Clause, this would be direct. There was no landing at St. Eustatius; and if an Intention to land is sufficient, there was no Intention to land more than the Consignees there should require. In the Case of the Columbus there was an Intention to take the Chance of the Market.

The Case is not within the Act, or if it were by constructive Implication; that only goes to prevent the Landing and not to subject to Forfeiture.

If Government had thought the Question proper to be tried, it is odd, that in the Case of the Columbus they should give it up, as, if that had been decided, much Expence might have been prevented.

FOR THE APPELLANT.

Sir WILLIAM SCOTT, *King's Advocate*.—It is enacted, that no European Goods shall be imported but under certain Regulations; amongst others, to be carried directly *hence*, and from *no other Place*; having, not only affirmative, but negative Words. This is followed by a Proviso, that it should be lawful in such Ships, so navigated, to ship Salt, Madeira, and some other Articles, and the same to transport and land.

It is submitted as a preliminary Observation, that the Word *transport* cannot be taken more largely in the Exception than the Word *carry* in the preceding Clause. Taken together, they must mean the same Thing, and do not allow a greater Latitude in the one Case than in the other. The Object of the Act was, that Foreigners should not share in the entire Navigation from the original Place of lading to the West Indies. To permit Madeira to be fetched from other Places would be as much within the Mischief, as European Goods must be carried directly from England. We contend, that it is not intended to permit carrying in a different Manner in the second Case from that which is required in the first. As the two Parts are *in pars materid*, they must have the same Construction.

[Mr. Justice Buller.—In the first it is expressly mentioned, but not in the other.]

Perhaps, in the usual Scale of Geography, Madeira would not be placed in Europe. It is not attached to it, and may not be considered in that Part of the Globe. But, for every Purpose of Revenue, it has been uniformly considered as situated in Europe; and its Productions have been classed as those of Europe. It would be absurd to construe it otherwise. To say, you shall not carry from Europe, and then to except a Place in Africa, would be *Exceptio e Non-descriptis*.

The Question comes to this:—Has there been a direct Voyage from Madeira within the Act of Parliament?

In the plain and obvious Meaning of the Word *direct*, a Voyage is only direct when there is an undeviating Course from the *terminus a quo* to the *terminus ad quem*, except where the Deviation is produced by inevitable Necessity.

If a Ship bound for Lisbon were to go up the Baltic, that would not be called a direct Voyage. This (it may be said) would be a considerable Deviation—but if Aberrations are allowed at all, what is there to limit or define them? What extent of Deviation changes the Character from Directness to

or Vessel, with all her Guns, Ammunition, Tackle, Furniture, and Apparel, and of all such Goods of the Growth, Production, or Manufacture of *Europe*, as were not *bona fide* laden and taken in in *England, Wales*, or the Town of *Berwick*, to be recovered and divided in Man-

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Indirectness? The only Latitude, in these Cases, should be the same as upon a Policy of Insurance—to touch at certain Places for the necessary Purposes of the Voyage. Touching at the Cape of Good Hope is no Deviation in a Voyage to the East Indies—but to go up the Mediterranean would be a Deviation in a Voyage to America. Going to any Port, without Necessity, is a Deviation, except such Ports as are usually stopped at in the Course of the Voyage, and as to them, the Underwriters must take Notice of the Course of Trade. The other Side is driven to contend, that a Voyage is direct, however circuitous, if there is no landing of the Goods. According to such Construction, Madeira Wine, which had been taken to the East Indies, might be considered as coming directly from England.

As to the Intention and Purpose of the Act, the Attention of the Court has been called to the Preamble. Two Objects are stated in it. The keeping up a Correspondence with the Plantations, and having the entire Navigation. Will it answer the first Purpose, if you call at every intermediate Port? Besides which the great Security that England should have the entire Freight and Navigation would be lost. If it is allowed to stop at any Port, make as many Regulations as you will, it will be impossible to discover where every particular Parcel of Goods was taken. Another Object was to supply the Colonies with Goods cheap, and a direct Voyage will better promote that, than one which is circuitous.

Much has been said about the Practice of the Custom-house, and it has been alleged, that the Custom-house at Lancaster permitted the dry Goods to go the very Voyage which is objected to. The Claim states, that the Vessel sailed from Lancaster duly cleared for Jamaica, with dry Goods on Board, Part of which was to be landed at Madeira and Parr at St. Eustatius—but it does not appear, that that Intention was notified to the Custom-house.

As to the Practice of the Revenue Officers in the West Indies, I should be very sorry to appeal to them. The Officers there lie at a great distance from the Seat of Government, where the Pulse of Authority beats weak. The Officers live in small Communities, where Corruption is most likely to prevail. Government, on that Account, lately thought it necessary to send fresh Officers from England; the Augean Stable has been cleansed, and I protest against any Inference from former Practices.

I contend the Act does not require an actual Importation, in order to subject to Forfeiture. Going to St. Eustatius breaks the Continuity—but there was an actual Importation—and it would be a gross Violation of Language to say, that the Wine was imported into Jamaica directly from Madeira. The primary Destination of it, was to be sold at St. Eustatius. It was carried there with a Design to sell. If that does not amount to an Importation, I do not know what does. The Intention is said to have been conditional;—so it was as to the Persons in St. Eustatius;—but the Intention of the Owners was absolute and complete. The Wine was not intended to be carried further, if the Consignees chose to accept it;—it was carried there for the express Purpose of Sale. When the Practice is relied on, has it been carried up to that Extent? That you may carry the Goods to a Port with Intention to sell them. Lax as the Practice has been, it will not be pretended to have been so large as that.

[Mr. Justice HALL:—This possibly may not be an Importation according to the Law of St. Eustatius.]

If so, that ought to be shown on the other side. If it is not shown, the Law in that respect must be taken to be as it is here.

The Case of the Colonies involved a great Variety of Questions. The Crown Officers thought, that there were many Circumstances in it, which entitled the Party to an equitable and indulgent Consideration. They therefore gave up the Case, reserving a Right to depend on legal Points which was contained in the Decision, if such should afterwards arise. A Case which passed without Argument, and with a Consent of its Operation as a Precedent, cannot operate as such.

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ner aforesaid; and all such as are Governors or Commanders of any the said Lands, Islands, Plantations, Colonies, Territories or Places (*Tungier* only excepted) shall before the five and twentieth Day of *March* One Thousand Six Hundred Sixty and Four, and all such as

As to the Ground of *bona fides*, the Revenue Law does not require a particular Fraud in particular Instances—but is applied to prevent those Practices, which, though they may be pursued for a good Purpose, might be made a Cover for Fraud.

The Number of Officers in the West Indies is comparatively small—and the Law ought to supply Defects arising from local Circumstances.

Mr. Attorney General, (Sir JOHN SCOTT.)—There are Circumstances to be considered, concerning the Destination of the Property and the Intent of the Shippers, as well with respect to the Goods from Lancaster, as those from Madeira. This is represented as the Case of a Vessel sailing from Lancaster with Goods, some of which were to be landed at Madeira, others in St. Eustatius, and the Remainder in the West Indies. The Manner of stating the Facts in the Claim is, that it cleared for Jamaica, with Goods, Part of which were intended to be landed at Madeira, and other Part at St. Eustatius. That bears in some Degree on the Question concerning the Goods taken. So far as I understand the Exchequer Practice, there was Nothing to prevent their being landed at Jamaica—but if they were carried to Madeira, or St. Eustatius, with Intent to be landed there, and were not landed, but carried to Jamaica, they would be seizable. If there is an Importation between the *Termini*, it becomes a distinct Voyage, and the Goods are considered as shipped at the intermediate Ports, although they were never taken out of the Ship. If a Ship goes to a Port in this Country, with Intent to land, it is a complete Importation. Is the Law the same with respect to going into foreign Ports? It is considered as an Importation in our Islands. There was no such Thing in any of them as a legal Port till very lately. The Ports here are set out by Commission. But the Court of Exchequer has always considered going into the usual Harbour as a going into Port, though no Port may be legally set out. Such is the Case at the present Day with respect to Jersey and Guernsey.

* Mr. Justice Heath asked if that had been held where the Intent is only conditional.

It is said that no Fraud can arise. The Intention of the Legislature was, that the British Vessel should be the Carrier from the extreme Limits. The other Side would contend, that if it was to go round the World with the Cargo, the Policy of the Act requires rather that that should be encouraged than discouraged—for more Shipping would be employed.

But direct Carrying is required—because, if a circuitous Voyage were allowed, it would be difficult to determine whether Goods were taken in at an intermediate Place or not. It is not like those Cases where Goods are put in the Custody of the Law.

A direct carrying means, as direct as in the Nature of the Thing it can be. You could not prevent touching at the usual Ports; but they cannot carry indirectly, so as to have an Opportunity to commit Fraud.

The Destination of the Wine from Madeira is stated as follows:—*consigned to Order at St. Eustatius or els. where.* I never saw such a Consignment. The Claim should have gone on to aver, that the Person at St. Eustatius did give an Order, if there was one. Did he address it to Jamaica, Lancaster, or what other Place? If to Great Britain, the Article could not be legally landed at Jamaica; if to Jamaica, it could not be brought to Great Britain. But if they mean to make out that it was ordered to be landed in Jamaica, that should be stated in the Claim. If it was either actually or conditionally to be landed at Jamaica, it could not be carried to Great Britain, supposing the Law to require a direct Importation to Great Britain. If they are right in Law that such conditional carrying is legal, there is Nothing in their Sense to shew that the original Destination was followed up by any Thing done at St. Eustatius. *St. Eustatius or elsewhere* is executory. What is there to fix it more to St. Eustatius than elsewhere. They might then go to any Part of the World to receive Orders. Suppose they had gone to Lancaster, they might say it was for Orders—I do not contend that that is a necessity, but it is a possible Construction. There is Nothing in this Claim to shew that the Master did at St. Eustatius receive Orders to go to Jamaica or elsewhere. If no such Order was given, the Voyage was complete at the Place where they were to receive Orders.

shall hereafter be made Governors or Commanders of any of them, shall before their Entrance upon the Execution of such Trust or Charge, take a solemn Oath before such Person or Persons as shall be authorized by his Majesty, his Heirs and Successors, to administer the same;

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As to the Question, whether Madeira is in Europe, or Africa, if the sixth Section only prohibits Goods of the Growth of Europe, the seventh would be useless if the Goods enumerated in it were not considered as Goods of Europe. If Madeira is not to be taken as a Part of Europe, why is there a Proviso to lessen a Prohibition in a Case to which the Prohibition cannot apply? So by the 4th Geo. III. ch. 15, no European Goods are to be landed in the Plantations, unless they are wholly and *bona fide* shipped here, with an Exception of Madeira. It has been uniformly considered in the legislative Map of the World that Madeira and the Azores are in Europe.

Then, as to the direct carrying, those who say that taking the Wine to St. Eustatius is a direct carrying, must also contend that it is lawful to go round the World, and that the Article kept on Board may visit every Port and be landed at last. If that is the Intention, it is odd the Act should be not directly imported, but directly carried.

That the Construction which I contend for is right, may be collected from other Acts *in pari materia*. The Stat. 31 Geo. III. ch. 34, recites, that it is expedient that the Grapes of Italy should not be imported except directly, and prohibits any from being imported or brought (which is synonymous to carried) otherwise. Before that Time they could be brought from any Place. The Legislature saw the Mischief of that. If it is contended, that any Thing is imported directly from thence, after having gone all round the World; that is prevented by the Term *brought*; and *brought* and *carried* have the same Signification.

The same Word is used guardedly in 27 Geo. III. c. 19, with respect to what may be imported from Gibraltar. Goods of the Dominions of the Emperor of Morocco may be imported or brought into Great Britain which have been imported directly into Gibraltar from those Dominions. Those who contend, that in the present Case there is a direct carrying from Madeira to Jamaica, must contend, that the last-mentioned Act is satisfied if the Goods are first brought to Great Britain, then to Gibraltar, and after being there ten Years are brought to Great Britain again.

The same Observation arises upon the commercial Treaty with France carried into effect by Act of Parliament—27 Geo. III. ch. 13. It shall be lawful to import or bring directly from France any of the specified Articles. If they went round the World to Great Britain, is that within the Meaning of the Legislature, speaking of bringing Goods directly from France. It was the Policy of this Act to prevent circuitous Voyages, and the same Words should not have a different Construction upon the two Acts. I admit that this Act should have the same Construction as the fourth Section of the Navigation Act, where the Words are *shipped or brought*. I understand the Distinction which has obtained is, that if Goods are taken to a Place, but have not been unladen, they cannot be said to be shipped there, but they may be said to be brought, which Word conveys a different Idea.

If the Property had not been landed in Jamaica, but brought to Great Britain, and seized because it was not brought directly, the Respondents might say “I have a right to Land it—my Consignment is to Order at St. Eustatius or elsewhere—how do you know that the Order was to Land in Great Britain?”—The *onus* lies on them to shew the Destination for Jamaica—they have shewn no such Thing in their Claim—there is nothing in that which would not enable them to say—“I did not bring it from Jamaica, but from Madeira, calling at St. Eustatius and Jamaica. No Order appears to Land at Jamaica. It must be taken to be landed at the ultimate Destination of the Vessel, which was Great Britain.

Dr. NICHOLL.—The Facts are perfectly agreed, and the Question is, whether the Wine was imported, under the Permission of the second Clause. As to the Question respecting the sale of Madeira, that has been completely done away by the Attorney-General. For the purposes of Revenue, Madeira is considered to be in Europe. If so, this Importation is prohibited by the 6th Section—is it allowed by the 7th?—for being a Proviso the Party must shew himself to be clearly within the Permission of that Proviso. Two Questions

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to do their utmost within their respective Governments or Commands, to cause to be well and truly observed what is in this Act enacted, in relation to the Trade of such Lands, Islands, Plantations, Colonies, Territories and Places, under the Penalty of being removed out of their

have been made—first, whether a direct Importation is required—second, whether this is a direct Importation. As to the first: the seventh Section expressly requires the Wine to be laden at Madeira, and *transported* into the British Plantations. Can the word *transported* authorise them to send to St. Eustatius, giving power to a Person there, either to take the Commodity or send it on? So, the Words of the 7th Section imply, that the Navigation must be direct. By referring to the former Clause, to lade and transport, in the Proviso, means the same as to carry directly in the preceding Section. The Proviso is not an Exception as to the manner of carrying, but only as to the Place from which the Article may be carried. The policy of the Act equally requires a direct Carriage from Madeira to Jamaica.

As to the second Point, I apprehend there is not a direct Importation, unless the Article be destined originally for a British Colony, without an intent to land at an intermediate Place. Then here is a *medius terminus* which renders the Carriage indirect. It cannot be said there was no Importation at St. Eustatius; all the Wine was consigned there so far as related to the act of the Lader, and the subsequent act of the Consignor, at St. Eustatius, makes an Importation and Re-exportation. The Case of the Columbus was mentioned by all the Advocates on the other Side. It does not apply, or if it did, the Protest would prevent its operating as a Precedent. But the difference is, that the Wine there, was not destined either for a French Port; or a British Port, in the West Indies, but for London. The Ship was driven by Stress of Weather, into Madeira, where some Wine was bought. It went to Dispose of some Herrings at Tobago. Having an Opportunity of getting some Lumber there, in exchange for that, left some Wine which was not destined there. The chief Ground of Seizure was the Lumber, and not the Madeira, which was consigned for London.

The whole here was imported into St. Eustatius; bringing in for the purpose of Sale, is an Importation. It was brought there, not in *transitu*, but to a Market, and must have fresh Clearances. Those at Madeira, could not shew the Destination to Jamaica. There are certain Cockets dispensed with as to Madeira, because there is no British Custom-house there, but the original Documents must shew the Destination. It is said, if these Goods were liable to Forfeiture, those shipped at Lancaster were so too. But they were originally destined for Jamaica, and were only at St. Eustatius in *transitu*.

As to what is said about Usage, I do not admit but deny the Fact. The Practice may have been overlooked, but there is no Usage or Custom to authorize it. The other Side argued on the policy of the Act; but the Policy is not merely the Employment of British Shipping. There is another Object, which is to supply the Plantations as cheaply as possible and maintain a greater Correspondence with them. The more cheaply they are supplied, the more the general Objects of the Act will be effectuated. But if the Ships are permitted to hawk the Goods at intermediate Ports, they must be worse supplied and pay higher Freights. Instead of rendering the Supply more cheap, it would destroy the Policy of the Act.

IN REPLY.

MR. HARDINGE.—The simplicity of the Point made by the Respondents, is equal to the Force and Clearness of it. As to the Mode of Claim and want of strict Averment; a Claim of this Kind is not required to be so strict as a Plea, and it is a violent and not an obvious Interpretation, which is put upon it by the Attorney-General. For the Goods in Question had originally a conditional Destination. This is a penal Act in restraint of Commerce, therefore, in the prohibiting Part it is to be construed in as limited, and in the Exception from the Penalty, in as extensive a Sense as the Words will permit.

The Questions, as has been often stated, are, whether the Carriage of Madeira must be as direct as is necessary for the Dry Goods from Lancaster, and whether, if that be the Law, the actual Carriage was indirect.

The first Point is in a Word. The 6th Section is applied to European Goods strictly considered, they are to be carried in a certain specific Manner, they are to be laden in England, in English-built Shipping, the Master and

respective Governments and Commands : And if any of them shall be found, after the taking of such Oath, to have wittingly and willingly offended contrary to what is by this Act required of them, that they shall for such Offence be turned out of their Governments, and be un-

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three-fourth of the Mariners are to be English, and the Carriage is to be direct. Such is the first Clause. What is the second? It provides that Madeira Wine may be shipped at Madeira, and may be carried to our Foreign Plantations in Ships described by the preceding Clause, or in other Words, as they might have been before this Act of Parliament. I could concede that the want of the word *directly* in the second Clause is a mere slip, be it so, the slip is fatal.

Sir WILLIAM SCOTT said, that as the two Parts were in *pari materię* they must have the same Construction, but being in *pari materię* cannot extend a penal Act. If that was enough, why was not it sufficient to say, Madeira Wines may be shipped at Madeira. Then, the preceding Clause might in other respects attach; but it says, in *such Ships so navigated*, that shews that in the minds of the Legislature, there was a Necessity it should be expressed. They would equally see the Necessity of requiring Directness if such was the Intention.—“Transport” was said by Dr. NICHOLL, to be Equivalent to “carry direct,” but I deny the Exposition.

If there had been nothing in the first Clause, but that the Carriage should be direct, and then the Proviso had interposed, or if there had been two separate Acts, will any Man say, that because they were in *pari materię*; the second omitting the Words of the first would be deemed to have the Construction of the first. The Clause extends not only to Madeira, but also to Salt, and as to being in *pari materię*, that Privilege is extended by St. 13 Geo. 1. ch. 5, to Salt, sent to Pennsylvania. It contains a Legislative Direction that Salt may be carried and imported [*not directly* but] in the Manner prescribed by 12 Chas. 2. There is a similar Provision by 3 G. 2. ch. 12. with respect to New York. Is it contended that the Carriage may be circuitous to Pennsylvania and New York, but must be direct to other Places?

But whatever the Clause may import as to the first Point, if we come within the second, the Goods are perfectly safe, that is, directly carried according to the Meaning of the Act, which is not re-exported. Will it be said, that this Wine, which was not made over to the Consignee at St. Eustatius, was exported from thence. The Act of Parliament says, no—the Lading was not there.

As to the Ground of constructive and virtual Importation, I agree that Fraud in the Intention to import is not necessary to constitute an Importation, but there must be an *animus importandi*, which must be manifested by some overt Act at the Port. Suppose there were a manifest Intention, at Madeira, to import the whole at St. Eustatius, and in the intermediate Passage that Intention was completely abandoned—it would be the same as if there never was any such Intention at all—but here there never was such Purpose, and though it is argued, that it was the Intention of the Laders to land the whole, that is not true. The Intention was to land not the whole, but what the Consignees might want. This was not wanted—therefore it was not intended to be imported—and it makes no Difference whether it was or was not dependant on the Option of the Consignees.

When we are told of the Policy of the Act, it is safer to cut the Knot than loose it. Be the Argument ever so sound, that the Goods would not be sold so cheaply, it is enough to say, that the Act might intend, by a general Restraint, to prevent taking Goods, except in a particular Manner, and yet not intend to prevent it in this Respect, even for effectuating the same general Purpose.

Dr. LAWRENCE.—In the Court below, the Case was argued merely upon this Point—That the Importation must be absolutely direct—and that there must be no greater Deviation than is allowed upon Policies of Insurance. The Attorney General has not pursued that Principle. The Case was intended to be argued on legal Grounds, and not upon any Dispute of Facts as it has been here.

Observations have been made on the Policy of the Act, as it appears in the Preamble,—that it was intended the Navigation should be made cheaper, which would require a direct Voyage. It is by no Means a necessary Conse-

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capable of the Government of any other Land, Island, Plantation or Colony; and moreover, forfeit the Sum of one thousand Pounds of lawful Money of England; the one Moiety to his Majesty, his Heirs and Successors; and the other Moiety to him or them that shall in-

sequence, that the Colonies would be supplied cheaper by a direct Voyage: a circuitous Voyage might have that Effect in many Instances.

A preliminary Point has arisen as to the Geography of Madeira. It is argued, that it should be considered as an European, and not as an African Island, although it geographically belongs to Africa.

No Inference can be drawn from this Act—because it is the immediate Subject in Dispute—and the Clause in the 4th Geo. III. is calculated to avoid this Confusion. There is not a Word in it about *European Goods*. It only speaks of *Ships coming from Europe*. The Wording of the Act does not give, but rather avoids the Construction in Question. With regard to the Quarters of the World, the Legislature, in the Navigation Act, describes them in a sweeping Manner, by referring to the usual Designation in Cards and Maps.*

* No Goods of Africa, Asia, or America, or of any Part thereof, or which are described or laid down in the usual Cards or Maps of those Places shall be imported, &c.

As to construing Madeira to be, for the Purposes of this Act, in Europe—because otherwise the 7th Section would be an *exceptio a non descriptis*—we all know very well how exceptive Clauses get into Acts of Parliament. Particular Facts may be suggested, and Amendments are frequently made; but a mere Inference from an Exception will not overturn the Ideas arising from the general Part.

It is contended, on the other Side, that there must not be such a Deviation as would destroy a Policy of Insurance. In Cases of Insurance, the smallest Deviation is fatal. In a Case lately decided in the House of Lords, a Vessel which had Liberty to touch at Leith, touched a few Miles below—and it was held, to vitiate the Policy, so cruising by a Letter of Marque destroys the Insurance. The Principle of these Cases is, that the Deviation varies the Risk. What would be the Consequences to British Commerce, if the same Strictness was necessary under all the Acts which require a direct Importation? By the Book of Rates, all Drugs, imported directly from the Place of their Growth, in English-built Shipping, are to be rated at only One-third of what is charged in the Book. Drugs are brought from a Variety of Places—but, according to the Doctrine contended for, the Ship cannot stop any where. By 22 Geo. III. c. 78, Hungarian Drugs are to be imported directly. Must Ships, having these aboard, never stop any where? There are many other Acts upon which a similar Absurdity would arise.

The Attorney General says the Legislature did not intend to say Goods might go all over the Globe. Certainly no such Thing was in the Contemplation of the Legislature. If their Construction must prevail in this Case, it must in all—and the Consequence will be, that you can only carry one Kind of Goods. There was a Case which arose in 1681, respecting some Worm Seed, which was brought from Leghorn in an English-built Ship, and was alleged to have been brought to Leghorn in another English-built Ship—and Mr. Ward, then Attorney General, was consulted whether this was a direct Importation, which entitled to an Exemption of Duty under the Book of Rates; and he was of Opinion, that it was not, there being a *medius terminus*; But in that Case there were two distinct Voyages on distinct Interests. The King's Advocate alluded to the Opinion in the Court below, but it has been since published—(Reeves' Law of Shipping, 171.)—and therefore he did not adduce it again. There are other Opinions, by Mr. Saunders and Sir Edward Northey, (Reeves, 173, 175.) In other Cases of direct Importation, no such direct Voyage without Deviation is required.

The Words of the Clause are not only positive but also negative—that the Goods shall be carried directly from England, and from no other Place or Places whatsoever. The negative Words are clear Interpretations of the others; they shew that *direct* means no more than *only*, and that a direct Importation is something different from a direct Voyage.

This Exposition is confirmed by Acts which have taken place concerning the 18th Section of the Navigation Act, which directs that none of the enumerated Commodities shall be shipped, carried, conveyed, or transported from the Plantations, except to some of our other Plantations, or to this Country, there to be laid on shore. This is referred to by various Acts of Parliament using the Word *direct*. In particular the 4th of Geo. III. ch. 15,

form or sue for the same in any of his Majesty's Courts in any of the said Plantations, or in any Court of Record in *England*, wherein no *Essoin*, Protection or Wager of Law shall be allowed.

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15 Car. II. c. 7.

IX. And it is hereby further enacted, That if any Officer of the

Penalty upon Officers of the Customs.

Sec. 27, adding to the enumerated Articles, uses this Expression, Coffee, &c. of any British Colony or Plantation in America are to be imported directly from thence into this Kingdom. This is an Interpretation of the Legislature, the Object of which was only to add to the enumerated Articles, and shews what is considered as a direct Importation. It is the Act of landing that constitutes the Indirectness, or if there is any Thing equivalent to landing it is that. The Interpretation of the Legislature, as well as the fair Interpretation of the Words is, that there shall not be a landing or any Thing equivalent. I must complain of the Niceties which have been used. It was intended to lay down a general Rule of Law, and make this a leading Case. Any Observations on Words are inconsistent with that Intention.

It is said there were Circumstances which were applicable to the Wine and not to the dry Goods, so that the one was forfeitable and the other not, because the dry Goods were never intended to be landed at St. Eustatius. The original Intention respecting the Wine was such as the Master afterwards carried into Execution. It is, I apprehend, sufficient if the Consignee says not here, but there. It is not said *totidem verbis*, that he did direct the Wine to be carried to Jamaica, but it is not to be taken, that because that is not formally expressed, the Contrary must be inferred. The Argument upon the Subject rather applies to procure a Condemnation of this Ship than to produce a general Rule.

As Ports are mentioned in many Acts of Parliament respecting the West Indies, the Word must be taken *quasi* Port, but it should appear that the Goods were there for Importation. In the Clause, introducing the Principle of the Hovering Act into the 4th Geo. III. the Vessel is permitted to stay off four and twenty Hours. It is the usual Course of Trade to send into Port, within that Time, to know the State of the Market, and then to act accordingly. Under a similar Practice, the Master might send to Eustatius, and make Inquiry, and afterwards come in. If it does not appear that he actually did go in at first, and Indulgencies of that Kind are usually allowed, the Court will not entertain a Presumption against him, to make a particular Case for the Condemnation of this Vessel.

That direct Importation was intended to be contrasted with no other Place is agreeable to divers other Acts, and appears to be the Sense of the Legislature, by Acts which would cramp and destroy Trade, if the Word *direct* was construed to require such a Voyage without Deviation, as is necessary upon Policies of Insurance.

In all the Instances where questions have been raised, the Goods were actually taken out of the Ship. There is no Proof of any absolute and complete Intention, between Madeira and Jamaica, to land more than was actually landed at St. Eustatius. If the Court presume any Thing, it will be in Favour of the Master, who made no Concealment, and if it is necessary to enter upon that Point, they will presume that he did not go into St. Eustatius, until his Intention what to land was fixed. There have been Cases in which the Officers of the Crown have held the Importation to be direct, though the Goods were actually taken out of the Ship.

This is a favourable Case, in which there has been no fraudulent Intention.

No Notice or Direction was given to the Merchants not to follow this Course of Trade. The Costs which have been incurred considerably exceed the Value of the Property.

The Court affirmed the Sentence of the High Court of Admiralty, (by which it was held that no Forfeiture had been incurred,) without Costs—but gave no public Opinion on the different Points which had been discussed.

No. 4.
15 Cat. II. c. 7.

Customs in *England, Wales*, or Town of *Berwick upon Tweed*, shall give any Warrant for, or suffer any Sugar, Tobacco, Ginger, Cotton-wool, Indigo, Speckle-wood, or *Jamaica-wood*, Fustick or other Dying-wood of the Growth of any of the said Lands, Islands, Colonies,

It is to be observed, that three Questions of considerable Importance arose in this Cause.

1st. Whether *Madeira* is, for the Purposes of Revenue and Navigation, to be considered as situate in Europe, or in Africa.

2nd. Whether the Goods mentioned in the 7th Section of 15 Charles II. are, by Force of the Words in such Ships so navigated, required to be carried as directly as the Goods mentioned in the preceding Section.

3rd. Whether Goods carried to a Port, with a conditional Intention to be landed, but never taken out of the Ship, are directly carried to an ulterior Port within the meaning of 15 Chas. II. ch. 7. Sec. 6.

Upon any one of these Points being decided in favour of the Respondents, the Sentence must necessarily have been affirmed; but since the Court of Delegates (as I believe is usual) did not give any public Opinion—it does not appear how many of the Points were settled by their Determination. This Case can therefore only be considered as a direct Precedent in others exactly similar.

In order to shew in what Manner the Questions were agitated, the Arguments of Counsel are stated very much at length, which, although it may produce the Charge of Prolixity and Repetition, may possibly be of use in elucidating several Points referred to as Arguments, and may facilitate future Discussion upon any of the contested Questions. In order to pave the Way to the Decision of the stated Point, the minor and very insignificant Question upon the particular Language of the Claim must have been determined in favour of the Respondents.

As the Case of the *Columbus* was so frequently referred to, it may not be amiss to Insert the following Statement of the Circumstances of that Case, from Sir James Marriott's Judgment, as it is reported in the *Collectanea Juridica*, vol. 1, p. 83. Premising that the Seizure was made principally on the ground of Stat. 27; Geo. 3, Cap. 39, whereby, Lumber imported from any of the Ports, of the American States, is prohibited, if brought indirectly from any Foreign Plantations.

"The Ship *Columbus* duly cleared and sailed out from London, in Ballast, November 14, 1786, for *Gottenburgh*, in Sweden. There the Master took in a Cargo of dried Herrings. The Mariners' Contract expresses that the intended Voyage was to be from London to *Gottenburgh*, and from thence to *Tobago*, and elsewhere. She accordingly sailed from *Gottenburgh*, the 14th of Jan. 1787, for *Tobago*, meeting with a hard Gale of Wind, and being in want of Water, she put into *Madeira*, on the 7th of March, to Water and Repair. The Master took in *Madeira Wine*, in barter for some of the Herrings, and having repaired his Ship, and taken in Water and other Necessaries, sailed for *Tobago*, where he arrived the 2d of April, and there, by Permission of the French Governor, the Captain disposed of the remainder of his Herrings, and Part of his *Madeira Wine*, for Landing of which he obtained a Permit, from the French Custom-house, at *Tobago*, for ten Pipes, two Hogsheads, and three Quarter Casks. While the Ship was lying at *Tobago*, he purchased on behalf of, and shipped on Account of his Owners, a Quantity of Lumber: the growth of the Dominions of the United States of America.

They were shipped to be imported into the Island of *Barbadoes*, with an Intenz for the Ship to take in a Lading of Sugar for London upon Freight. The Master at this time had received no Information of the passing the Act of the 27th of his present Majesty, forbidding such Importation indirectly from the Ports of the United States of America. The Master, having completed his landing at *Tobago*, purchased from a French Vessel lying there Twenty-three or Twenty-five Dozen of Claret in Bottles as Stores for the Ships use, stowed them with other Liquors in his Lockers in his Cabin, and on the 24th sailed for *Barbadoes*. This Claret was purchased partly by *Madeira Wine* in exchange, and partly by a small Bill of Exchange.

On the 7th of June, 1787, upon the Moment of the Ships arrival, before she could come to anchor, she was seized by Mr. Samuel Dearsley, then

Plantations, Territories or Places, to be carried into any other Country or Place whatsoever, until they have been first unladen *bona fide* and put on Shore in some Port or Haven in *England* or *Wales*, or in the Town of *Berwick*; That every such Officer for such Offence shall forfeit his Place, and the Value of such of the said Goods as he shall give Warrant for, or suffer to pass into any other Country or Place; the one Moiety to his Majesty, his Heirs and Successors; and the other Moiety to him or them that shall inform or sue for the same in any Court of Record in *England* or *Wales*, wherein no Essoin, Protection or Wager in Law shall be allowed.

No. 4.
15 Car. II. c. 7.

'XII. And forasmuch as several considerable and advantageous Trades cannot be conveniently driven and carried on without the Species of Money or Bullion, and that it is found by Experience, that they are carried in greatest Abundance (as to a Common Market) to such Places as give free Liberty for exporting the same; and the better to keep in and increase the current Coins of this Kingdom,' Be it enacted, and it is hereby enacted, That from and after the first Day of August One Thousand Six Hundred Sixty and Three, it shall and may be lawful to and for any Person or Persons whatsoever, to export out of any Port of *England* or *Wales*, in which there is a Customer or Collector, or out of the Town of *Berwick*, all Sorts of Foreign Coin or Bullion of Gold or Silver, first making Entry thereof in such Custom-house respectively, without paying any Duty, Custom, Poundage or Fee for the same; any Law, Statute or Usage to the contrary notwithstanding.

No. 5.

16 Charles II. c. 6.—An Act to prevent the delivering up of Merchant Ships.—*English* Ships not to be yielded up to Turks or Pirates. The Penalty on Masters of Ships. Process out of the Court of Admiralty. Mariners or inferior Officers declining to fight. The Penalty. Encouragement to Captains and Seamen to defend their Ships. Ships which shall be taken by the *English*. The Penalty of wilfully destroying Ships. The Continuance of this Act for three Years, &c.

acting as Collector of the Customs for the Port of Bridge Town. An Information was filed in the Vice-Admiralty Court at Barbadoes by Dearsley, charging this coming-in as an Importation into the Island of Barbadoes, contrary to the several Acts of the Revenue, particularly the 12th and 15th Chas. II. and the 4th and 24th. of his present Majesty, and his Royal Proclamation of the 8th of April, 1787—that Part of the Cargo was put on Board at Tobago, an Island in the West Indies, belonging to the French King; that it was the Growth, and Produce, and Manufacture of the United States of America, the Property of the Subjects of the said State, or of some foreign State; that the Wine, being the Growth and Produce of Europe, was not shipped in *England* but *Tobago*; that, on his arrival, the Master did not make a full Report of his Lading, and that Ten Cases of Wine and other Goods were found on Board after the Master had made his Report.

The learned Judge minutely examined all these Charges, and held, that there was no Ground of Seizure upon any of them.

No. 6.

22 & 23 Charles II. c. 11.—An Act to prevent the Delivery up of Merchants Ships, and for the Increase of good and serviceable Shipping.

22 & 23 Car. 11.

c. 11.

16 Car. 2, c. 6.

WHEREAS it often happeneth that Masters and Commanders of Merchants Ships do suffer their Ships to be boarded, and their Goods to be taken out by Pirates and Sea-rovers, notwithstanding they have sufficient Force to defend themselves, whereby not only the Merchants are much prejudiced, but the Honour of the *English* Navigation is thereby much diminished, and Merchants discouraged from lading their Goods on Board *English* Ships, to the Decay of Shipping; in the Preservation of which the Wealth, Honour and Safety of this Nation is so much concerned: To which the said Masters are encouraged by a Practice used towards them by the *Turks* and others, who after they have taken out the Goods, as an Encouragement to Masters of Ships to yield, do not only restore the Ship with such Goods as are claimed by the Masters or Seamen, but many Times pay unto the Masters all or some Part of the Freight, which hath many Times caused Suspicion of Treachery in the said Masters, to the great Dishonour of the *English* Nation:

No Master shall deliver up any Ship (of 200 Tons and sixteen Guns) to any Pirates or others, without fighting.

II. For the Prevention thereof for the future, and for the better Encouragement to Merchants, as well Foreigners as *English*, to freight and use *English* Ships; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, assembled in Parliament, and by Authority of the same, That where any Goods or Merchandizes shall be laden on board any *English* Ship, which Ship shall be of the Burthen of Two Hundred Tons or upwards, and mounted with Sixteen Guns or more, if the Master or Commander shall yield up the said Goods to any *Turkish* Ships or Vessels, or to any Pirates or Sea-rovers whatsoever, without fighting; That then and in such Case the Master shall, upon Proof thereof made in the High Court of Admiralty, be from thenceforth incapable of taking Charge of any *English* Ship or Vessel as Master or Commander thereof; and if he shall at any Time thereafter presume to take upon him to command any *English* Ship or Vessel, he shall suffer Imprisonment by Warrant from the said Court, during the Space of Six Months, for every such Offence: And in Case the Persons so taking the said Goods, shall release, give back, or let pass the said Ship, shall pay unto the said Master any Sum or Sums of Money, or any Goods in lieu of Money for Freight, or other Reward or Gift; that in all or any such Cases, the said Goods or Money so given, or the Value thereof, as also the Master's Part of such Ship, her Tackle, Apparel and Furniture so released, given back or let pass, out of which the said Goods were taken, shall be liable to repair the Persons whose Goods were so delivered or taken, by Action in the High Court of Admiralty: And in Case the Commander's or Masters' Part of the Ship, Tackle, Apparel and Furniture, together with such Money and Goods given as aforesaid, shall not be sufficient to repair all the Damages sustained; then the Reparations to be recovered on the Master's or Commander's Part of the Ship, to be divided *pro rata* amongst the Persons prosecuting and proving their Damages, and the Persons damaged to have their Action against the Master for the Remainder.

III. And be it further enacted by the Authority aforesaid, That no Master of any such *English Ship* as aforesaid, being at Sea, and having discovered any Ship to be a *Turkish Ship*, Pirate or Sea-rover, shall depart out of his Ship upon any Pretence whatsoever, lest by his Detention on Board any such Ship, the Safety of his own Ship be hazarded.

No. 6.
22 & 23 Car. II.
c. 18.
The Master not
to depart out of
his Ship.

IV. And be it further enacted, That if the Master of any *English Ship* or Vessel, though not of the Burthen of Two Hundred Tons, or mounted with Sixteen Guns as aforesaid, shall yield his Ship unto any *Turkish Ship*, Pirate or Sea-rover, (not having at the least his double Number of Guns,) without fighting, every such Master shall be liable to all and every the Penalties in this Act contained.

The Penalty when
the Ship is under
200 Tons and six-
teen Guns.

V. And be it further enacted by the Authority aforesaid, That upon Process made out of the High Court of Admiralty, it shall and may be lawful to and for all Commanders of his Majesty's Ships of War, or the Commanders of any other *English Ships*, to seize such Ships or Masters so offending, according to the said Process in such Case to be issued, and the same to bring or send in Custody into any Ports of his Majesty's Dominions, there to be proceeded against according to the Intent and Meaning of this Act.

To seize by Pro-
cess out of the
Admiralty.

VI. Provided, That none be hereby encouraged to violate the Rights of the Ports of any foreign Prince or States in Amity with the King's Majesty.

VII. And be it further enacted by the Authority aforesaid, That if the Mariners or inferior Officers of any *English Ship*, laden with Goods and Merchandizes as aforesaid, shall decline or refuse to fight and defend the Ship, when they shall be thereunto commanded by the Master or Commander thereof, or utter any Words to discourage the other Mariners from defending the Ship; That every Mariner who shall be found guilty of declining to fight as aforesaid, shall lose all his Wages due to him, together with such Goods as he hath in his Ship, and suffer Imprisonment, not exceeding the Space of Six Months, and shall during such Time be kept to hard Labour for his or their Maintenance.

Penalty for Mari-
ners refusing to
fight.

VIII. Provided always, That if any Ship shall have been yielded as aforesaid, contrary to the Will and Endeavour of the Master or Commander, by the Disobedience of the Mariners, testified by their having laid violent Hands on him; that in such Case the Master or Commander shall not be liable to the Sentence of Incapacity as aforesaid, nor to any Action for the Losses sustained by the Merchants, unless he shall have received back from the Takers thereof, his Ship, or some Recompence, Gift or Reward as aforesaid.

Where the Mas-
ter is forced to
yield his Ship,
there he is ex-
cused

IX. And be it further enacted by the Authority aforesaid, That every Mariner who shall have laid violent Hands on his Commander, whereby to hinder him from fighting in Defence of his Ship and Goods committed to his Trust, shall suffer Death as a Felon.

Penalty for Mari-
ners to force him
to yield his Ship,
Felony.

X. And for the better Encouragement to Captains, Masters, Officers and Seamen, to defend their Ship; Be it enacted by the Authority aforesaid, That when any *English Ship* shall have been defended by Fight, and brought to her designed Port, in which Fight any of the Officers or Seamen shall have been wounded, It shall and may be lawful to and for the Judge of his Majesty's High Court of Admiralty, or his Surrogate, or the Judge of the Vice-Admiralty within which the Ship shall arrive at her Return, upon Petition of the Master or Seamen of such Ship so defended as aforesaid, to call unto him such and so many as he shall be informed to be Adventurers or Owners of the Ship and Goods so defended, and by Advice with them to raise and levy upon the respective Owners and Adventurers, by Process out of the said Court, such Sum or Sums of Money, as him-

When any Offi-
cers or Seamen are
wounded in De-
fence of their Ship,
Provision is made
for their Main-
tenance

Seamen maimed
in fighting against
Pirates, provided
for by
8 Geo. 1, c. 24,
sec. 5.

No. 6.
25 & 23 Car. II.
c. 11.

self with the major Part of the Adventurers or Owners then present shall judge reasonable, not exceeding the Value of two *per Cent.* of of the Ship and Goods so defended, according to the first Cost of the Goods, to be made appear by the Invoice (which the Owner, or his Factor or Correspondent, is hereby required to produce) or by the Oath of the said Owner, Factor or Correspondent, if thereunto required; which Money so raised shall be paid unto the Register of the said Court, who shall receive for the same, Three-pence in each Pound, and no more, thence to be distributed amongst the Captain, Master, Officers and Seamen of the said Ship, or Widows and Children of the Slain, according to the Direction of the Judge of the said Court, with the Approbation of three or more of the Owners or Adventurers aforesaid, who shall proportion the same according to their best Judgments, unto the Ship's Company as aforesaid, having special Regard unto the Widows and Children of such as shall have been slain in that Service, and to such as shall have been wounded or maimed.

cy
by
shall assault them.

XI. And in case the Company belonging unto any *English Merchant Ship* shall happen to take any Ship, which Ship shall first have assaulted them, the respective Officers and Mariners belonging to the same shall after Condemnation of such Ship and Goods, have and receive to their own proper Use and Benefit such Part and Share thereof, as is usually practised in private Men of War.

Felony for any
Officer or other
Person wilfully to
destroy any Ship.

XII. And whereas it often happeneth that Masters and Mariners of Ships having ensured or taken upon Bottomary, greater Sums of Money than the Value of their Adventure, do wilfully cast away, burn, or otherwise destroy the Ship, under their Charge, to the Merchants and Owners, for the Prevention thereof for the future, Be it enacted by the Authority aforesaid, That if any Captain, Master, Mariner, or other Officer belonging to any Ship, shall wilfully cast away, burn, or otherwise destroy the Ship unto which he belongeth, or procure the same to be done, he shall suffer Death as a Felon.

Encouragement
given for building
good Ships.

XIII. And for the better Encouragement of Building good and defensible Ships, Be it enacted, That all and every Person or Persons, that shall within the Space of Seven Years from and after first of *May* next ensuing build or cause to be built, within any of his Majesty's Dominions, any Ship or Vessel of three Decks, with a Forecastle, and five Foot between each Deck, mounted with thirty Pieces of Ordnance at least, and other Ammunition proportionable, shall for the first two Voyages which the said Ship or Ships make from his Majesty's Dominions to any foreign Part, have and receive to his and their own proper Use and Benefit, one tenth Part:

XIV. And all Persons that shall build any Ships of two Decks, above three hundred Tons, and thirty Guns, shall have one twentieth Part of the Customs that shall be paid to his Majesty for all such Goods or Merchandise as shall be exported or imported on the said Ship or Ships, to and from this Kingdom: And the Commissioners and Officers of his Majesty's Customs are hereby impowered and required to pay the same to the Owner or Owners of the said Ship or Ships accordingly.

No. 7.

7 & 8 William III. c. 22.—An Act for preventing Frauds, and regulating Abuses in the Plantation Trade.

19.

XVII. And for a more effectual Prevention of Frauds which may be used to elude the Intention of this Act, by colouring foreign Ships under *English* Names; be it further enacted by the Authority aforesaid, That from and after the five and twentieth Day of *March*, which shall be in the Year of our Lord One Thousand Six Hundred Ninety-eight, no Ship or Vessel whatsoever shall be deemed or pass as a Ship of the Built of *England, Ireland, Wales, Berwick, Guernsey, Jersey*, or any of his Majesty's Plantations in *America*, so as to be qualified to trade to, from or in any of the said Plantations, until the Person or Persons claiming Property in such Ship or Vessel shall register the same as followeth; that is to say, If the Ship at the Time of such Register doth belong to any Port in *England, Ireland, Wales*, or the Town of *Berwick upon Tweed*, then Proof shall be made upon Oath of One or more of the Owners of such Ship or Vessel, before the Collector and Comptroller of his Majesty's Customs in such Port; or if at the Time of such Register the Ship belong to any of his Majesty's Plantations in *America*; or to the Islands of *Guernsey* or *Jersey*, then the like Proof to be made before the Governor, together with the principal Officer of his Majesty's Revenue residing on such Plantation or Island, which Oath the said Governors and Officers of the Customs respectively are hereby authorized to administer in the Tenor following, viz.

7 & 8 W. III. c. 22
English built
Ships to be regis-
tered, and Proof
made on Oath be-
fore the Collector
of the Customs, &c.

' *JURAT* A. B. That the Ship [Name] of
[Port] whercof [Master's Name] is at The Oath.
' present Master, being a [Kind of Built] of
' [Burthen] Tuns, was built at [Place where]
' in the Year [Time when] and that
' [Owners Name] of and of, &c
' are at present Owners thereof; and that no Foreigner, directly or
' indirectly, hath any Share, or Part, or Interest therein.'

XVIII. Which Oath, being attested by the Governor, or Custom Officer respectively, who administered the same, under their Hands and Seals, shall, after having been registered by them, be delivered to the Master of the Ship for the Security of her Navigation, a Duplicate of which Register shall be immediately transmitted to the Commissioners of his Majesty's Customs in the Port of *London*, in order to be entered in a general Register, to be there kept for this Purpose, with Penalty upon any Ship or Vessel trading to, from or in any of his Majesty's Plantations in *America*, after the said five and twentieth Day of *March*, and not having made Proof of her Built and Property, as is here directed, that she shall be liable, and she is hereby made liable, to such Prosecution and Forfeiture as any foreign Ship (except Prizes condemned in the High Court of Admiralty) would for trading with these Plantations by this Law be liable to.

Oath to be at-
tested by the Go-
vernor, and a Du-
plicate to be trans-
mitted, &c.

XIX. Provided always, That all such Ships as have been or shall be taken at Sea by Letters of Mart or Reprisal, and Condemnation thereof made in the High Court of Admiralty of *England* as lawful Prize, shall be specially registered, mentioning the Capture and Condemnation instead of the Time and Place of Building, with Proof also upon Oath, that the entire Property is *English*, before any such Prize shall be allowed the Privilege of an *English* built Ship, according to the Meaning of this Act.

Prize Ships to be
registered, &c.

No. 7. XX Provided also, That nothing in this Act shall be construed to require the registering any Fisher-boats, Hoys, Lighters, Barges, or any open Boats or other Vessels (though of *English* or *Plantation* Built) whose Navigation is confined to the Rivers or Coasts of the same *Plantation* or *Place* where they trade respectively, but only of such of them as cross the Seas to or from any of the Lands, Islands, Places or Territories, in this Act before recited, or from one *Plantation* to another.

Ship's Name not to be altered without registering de novo &c.

XXI. And be it further enacted by the Authority aforesaid, That no Ship's Name registred shall be afterwards changed, without registering such Ship *de novo*, which is hereby required to be done upon any Transfer of Property to another Port, and delivering up the former Certificate to be cancelled, under the same Penalties, and in the like Method, as is herein before directed; and that in case there be any Alteration of Property in the same Port, by the Sale of one or more Shares in any Ship after registering thereof, such Sale shall always be acknowledged by Indorsement on the Certificate of the Register before two Witnesses, in order to prove that the entire Property in such Ship remains to some of the Subjects of *England*, if any Dispute arises concerning the same.

No. 8.

12 Anne, c. 18.—An Act for the preserving all such Ships and Goods thereof, which shall happen to be forced on Shore, or stranded, upon the Coasts of this Kingdom, or any other of her Majesty's Dominions.

12 Anne, c. 18.
3 Ed. 1, c. 5.

4 Geo. 1, St. 2.

WHEREAS by an Act made in the third Year of the Reign of King EDWARD the First, concerning Wrecks at Sea, it is enacted, That where a Man, a Dog, or a Cat, escape quick out of the Ship, that such Ship, nor Barge, nor any Thing in them, shall be adjudged a Wreck, but the Goods shall be saved, and kept by View of the Sheriff, Coroner, or the King's Bailiff, and delivered into the Hands of such as are of the Town where the Goods were found; so that if any sue for those Goods, and after prove that they were his, or perished within his keeping, within a Year and a Day, they shall be restored to him without Delay, and if not, they shall remain to the King, or to such others to whom Wreck belongeth; and he that otherwise doth, and thereof be attainted, shall be awarded to Prison, and make Fine at the King's Will: And whereas by another Act made in the fourth Year of the Reign of the said King EDWARD the First, intituled *De officio Coronatoris*, concerning the Wreck of the Sea, it is enacted, That wheresoever it be found, if any lay Hands of it, he shall be attached by sufficient Pledges, and the Price of the Wreck shall be valued, and delivered to the Town: And whereas great Complaints have been made by several Merchants, as well her Majesty's Subjects as Foreigners, trading to and from this Kingdom, that many Ships of Trade, after all their Dangers at Sea escaped, have unfortunately near Home, run on Shore, or been stranded on the Coast thereof; and that such Ships have been barbarously plundered by her Majesty's Subjects, and their Cargoes imbezelled; and when any Part thereof has been saved, it has been swallowed up by exorbitant Demands for Salvage, to the great loss of her Majesty's Revenue, and to the much greater Damage of her Majesty's trading Subjects: For Remedy whereof be it enacted by the Queen's most Excellent Majesty,

by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Sheriffs, Justices of the Peace of every County, or County of a City or Town, and also all Mayors, Bailiffs, and other Head Officers of Corporations and Port-Towns near adjoining to the Sea, and all Constables, Headboroughs, Tythingmen, and Officers of the Customs in all and every such Places, shall, upon Application made to them, or any of them, by or on the Behalf of any Commander or Chief Officer of any Ship or Vessel of any of her Majesty's Subjects, or others being in Danger of being stranded or run on Shore, or being stranded or run on Shore, are hereby empowered and required to command the Constables of the several Ports within her Majesty's Dominions, nearest to the Sea Coasts where any such Ship or Vessel shall be in Danger, as aforesaid, to summon and call together as many Men, as shall be thought necessary to the Assistance and for the Preservation of such Ship or Vessel so in Distress, as aforesaid, and their Cargoes; and that if there shall be any Ship or Vessel, either Man of War or Merchants Ship, belonging to her Majesty, or any of her Subjects, riding at Anchor near the Place where such Ship or Vessel is in Distress or Danger, as aforesaid, the Officers of the Customs, and Constables above-mentioned, or any of them, are hereby empowered and required to demand of the superior Officers of such Ship or Vessel so riding at Anchor, as aforesaid, Assistance by their Boats, and such Hands as they can conveniently spare, for the said Service and Preservation of the said Ship or Vessel so in Distress, as aforesaid; and that in case such superior Officer of such Ship or Vessel riding at Anchor, as aforesaid, shall refuse or neglect to give such Assistance, he shall forfeit for the same the Sum of one hundred Pounds, to be recovered by the Superior Officer of the said Ship or Vessel so in Distress, as aforesaid, together with their Costs of Suit, in any of her Majesty's Courts of Record, by Action, Debt, Bill, Plaint, or Information, wherein no Essoin, Wager of Law, or Protection shall be allowed.

II. And for the Incouragement of such Persons as shall give their Assistance to such Ships or Vessels so in Distress, as aforesaid, Be it further enacted, That the said Collectors of the Customs, and the Master or Commanding Officer of any Ships or Vessels, and all others who shall act or be employed in the preserving of any such Ship or Vessel in Distress, as aforesaid, or their Cargoes, shall within thirty Days after the Service performed be paid a reasonable Reward for the same, by the Commander, Master, or other Superior Officer, Mariners or Owners of the Ship or Vessel so in Distress, as aforesaid, or by the Merchant, whose Ship, Vessel, or Goods shall be so saved, as aforesaid; and in Default thereof, the said Ship, Vessel, or Goods so saved, as aforesaid, shall remain in the Custody of such Officer of the Customs, or his Deputy, until such Time that all Charges shall be paid, and until the said Officer of the Customs, or his Deputy, and the said Master or other Officer of the Ship or Vessel, and all others so employed, as aforesaid, shall be reasonably gratified for their said Assistance and Trouble, or good Security given for that Purpose, to the Satisfaction of the several Parties that are to receive the same; and that in case after such Salvage, the Commander or other Superior Officer, Mariners or Owners of such Ship or Vessel so saved, as aforesaid, or Merchant whose Goods shall be so saved, as aforesaid, shall disagree with the said Officer of the Customs, or his Deputy, touching the Monies deserved by any of the Persons so employed, as aforesaid, it shall be lawful for the Commander of such Ship or Vessel so saved, or the Owner of the Goods, or the Merchant interested therein, and also for the said Officer of the Customs, or his Deputy, to nominate three

No. 8.

12 Anne, c. 10.

Sheriffs, Mayors, &c. and Custom-house Officers to summon Men to assist Ships in Distress.

All Ships to assist.

on Forfeiture of 100l.

Reasonable salvage to be made

By 5 Geo. 1. c.

11 § 13.

Goods saved from stranded ships are to pay custom.

No. 8.
12 Anne, c. 18.

Three Justices to
adjust the Quan-
tum.

Goods not claimed
in Twelve Months
to be sold,

and the Monies
transmitted into
the Exchequer, &c.

Persons enter-
ing Ship without
Leave,

or hindering the
saving the Ship, to
make double Satis-
faction.

Masters may re-
pel Pressers into
the Ship.

of the neighbouring Justices of the Peace, who shall thereupon adjust the *Quantum* of the Monies or Gratuities to be paid to the several Persons acting or being employed in the Salvage of the said Ship, Vessel or Goods; (1) and such Adjustments shall be binding to all Parties, and shall be recoverable in an Action at Law to be brought in any of her Majesty's Courts of Record, by the respective Persons to whom the same shall be allotted by the said Justices of Peace; and in case it shall happen, that no Person shall appear to make his Claim to all or any the Goods that shall be saved, that then and in such Case, the chief Officer of the Customs of the nearest Port to the Place where the said Ship or Vessel was so in Distress, as aforesaid, shall apply to three of the nearest Justices of the Peace, who shall put him or some other responsible Person in Possession of the said Goods, such Justices of Peace taking an Account in Writing of the said Goods, to be signed by such Officer of the Customs; and if the said Goods shall not be legally claimed within the Space of twelve Months next ensuing, by the rightful Owner thereof, then publick Sale shall be made thereof, and if perishable Goods, forthwith to be sold, and after all Charges deducted, the Residue of the Monies arising by such Sale, with a fair and just Account of the Whole, shall be transmitted to her Majesty's Exchequer, there to remain for the Benefit of the rightful Owner when appearing, who upon Affidavit or other Proof made of his or their Right or Property thereto, to the Satisfaction of one of the Barons of the Coife of the Exchequer, shall upon his Order receive the same out of the Exchequer.

III. And it is hereby also enacted, That if any Person or Persons whatsoever, besides those impowered by the said Officer of the Customs, or his Deputy, and the Constables, as aforesaid, shall enter or endeavour to enter on Board any such Ship or Vessel so in Distress, as aforesaid, without the Leave or Consent of the Commander, or other superior Officer of the said Ship, or of the said Officer of the Customs, or his Deputy, or of the said Constable, or some or one of them employed for the Service and Preservation of the said Ship or Vessel, as aforesaid; or in Case any Person shall molest him, them, or any of them, in the saving of the said Ship, Vessel or Goods, or shall endeavour to impede or hinder the saving of any such Ship, Vessel or Goods, or when any such Goods are saved, shall take out or deface the Marks of any such Goods, before the same shall be taken down in a Book or Books for that Purpose provided by the Commander or ruling Officer, and the first Officer of the Customs, as aforesaid, such Person or Persons shall, within the Space of twenty Days, make double Satisfaction to the Party grieved, at the Discretion of the two next Justices of Peace, or in Default thereof, shall by such Justices of Peace be sent to the next House of Correction, where he shall continue and be employed in hard Labour by the Space of twelve Months then next ensuing; and that it shall be lawful for any Commander or superior Officer of the said Ship or Vessel so in Distress as aforesaid, or for the said Officer of the Customs, or Constables on Board the same Ship or Vessel, to repel by Force any such Person or Persons so shall, without such Leave or Consent from the said Commander or superior Officer, or the said Officer of the Customs, or his Deputy, or such Constables, as aforesaid, press on Board the said Ship or Vessel so in Distress, as aforesaid, and thereby

(1) A Person to whom the Commander sent for Assistance, and who directed, under the Inspection of the Officers of the Customs, the landing of the Goods, &c. is thereby constituted an Agent of the Owners, and taken out of the Provisions of this Act.—Baring v. Dory, 8 E. 57. See post 48 Geo. 3, c. 130—49 Geo. 3, c. 122—53 Geo. 3, c. 37.

No. 8. Manors, or other Person whatsoever, of or in Relation to any Right
 12 Anne, Stat. 2. which they, or any of them respectively have, or shall have, or law-
 c. 18. fully may claim to any Wreck or Wrecks, or any Goods that are or
 shall be flotsam, jetsam or lagan, but that such respective Rights
 shall be enjoyed in as full, ample, and beneficial a Manner, in every
 Respect, as if this Act had never been made.

Continuation. X. Provided, That this Act shall continue in Force for the Space
 of three Years, and from thence to the End of the next Session of
 Parliament, and no longer.

Made perpetual by 4 Geo. 1, c. 12.

No. 9.

4 George I. c. 12.—An Act for enforcing and making
 perpetual an Act of the twelfth Year of her late Majesty,
 intituled, *An Act for the preserving of all such Ships
 and Goods thereof, which shall happen to be forced on
 Shore, or stranded upon the Coasts of this Kingdom,
 or any other of her Majesty's Dominions; and for
 inflicting the Punishment of Death on such as shall
 wilfully burn or destroy Ships.*

4 Geo. I. c. 12. WHEREAS the Act made in the twelfth Year of the Reign of
 12 Ann. Stat. 2. her late Majesty Queen Anne, intituled, *An Act for the
 c. 18. preserving of all such Ships and Goods thereof, which shall happen
 to be forced on Shore, or stranded upon the Coasts of this Kingdom,
 or any other of her Majesty's Dominions*, will expire at the End of
 3 Ed. 1, c. 4. this present Session of Parliament, unless the same be continued:
 4 Ed. 1, Stat. 2. And whereas the said Act hath been found by Experience to be of
 great Use and Benefit to the Seafaring Men and Merchants of this
 Kingdom, and other his Majesty's Dominions: Be it therefore
 enacted by the King's most Excellent Majesty, by and with the
 Advice and Consent of the Lords Spiritual and Temporal, and Com-
 mons, in this present Parliament assembled, and by the Authority of
 the same, That the said recited Act, intituled, *An Act for the pre-
 serving of all such Ships and Goods thereof, which shall happen to be
 forced on Shore, or stranded upon the Coasts of this Kingdom, or any
 other of her Majesty's Dominions*, and all the Clauses, Matters and
 Things therein contained, shall be and is hereby declared to be made
 perpetual.

Not to extend
 to the Admiralty
 Court of the
 Cinque-ports. II. Provided always, and it is hereby further enacted, That the
 said Act, or any Thing therein contained, shall not be construed to
 extend to, or any ways affect the ancient Jurisdiction and Usage of
 the Admiralty-Court of the Cinque-ports, or the Officers thereof
 belonging; but the proper Officers of the said Admiralty-Court shall
 be and are hereby authorized and empowered to put the said Act in
 Execution within the Jurisdiction of the said Cinque-ports, in as full
 and ample Manner, to all Intents and Purposes, as any other Person
 or Persons are by the said Act appointed to do in any other Parts of
 this Kingdom.

Any Owner, or
 wilfully destroying
 in Ship to preja-
 dice, Death. III. And for the effectual preventing the wilful casting away,
 burning or otherwise destroying of Ships by the Owners, Masters and
 Mariners thereof, and thereof belonging, Be it enacted by the Author-
 ity aforesaid, That if any Owner of, or Captain, Master, Mariner, or
 other Officer belonging to any Ship shall, after the twenty-fourth Day

of June which shall be in the Year of our Lord One Thousand Seven Hundred and Eighteen, wilfully cast away, burn or otherwise destroy the Ship of which he is the Owner, or unto which he belongeth, or in any Manner of wise direct or procure the same to be done, to the Prejudice of any Person or Persons that shall underwrite any Policy or Policies of Insurance thereon, or of any Merchant or Merchants that shall load Goods thereon, he shall suffer Death.

No. 9.

4 Geo. I. c. 12.

By 11 Geo. I. c. 29, sec. 5, this Clause is explained, and the Offenders ousted of Clergy.

No. 10.

2 Geo. II. c. 36.—An Act for the better Regulation and Government of Seamen in the Merchants Service.

WHEREAS the Welfare and Riches of this Kingdom greatly depend on the Trade and Navigation thereof, the same being of great Use and Benefit, and tending very much to enrich the Subjects thereof, upon which great Numbers of the Artificers and Manufacturers Livelihoods wholly depend; and whereas, for several Years last past, the Navigation carried on by the Merchants to Parts beyond the Seas, hath been and doth still remain under very great Difficulties and Expenses, by the Uncertainty they labour under by Seamen and Mariners, who ship themselves on board Merchant Ships, and after they have so done, neglect their Duty, and will not remain on board their Ships or Vessels to discharge their Duty; and very often when Ships and Vessels come to be cleared out, in order to proceed on their respective Voyages, the Seamen refuse to proceed with them, without coming to new Agreements for increasing their Wages, and many of them will leave their Ships and Vessels and not proceed on their Voyages, which put the Owners of such Ships and Vessels to great Trouble and Charges to get other Sailors or Mariners in their Stead, and often is a Means to increase the Voyages of such Ships, and Vessels, to the great Prejudice of the Owners and Freighters of the Goods on board the said Ships and Vessels; and yet such Seamen and Mariners, after they have committed such Offences and Disorders, will bring Actions against the Owners or Masters of the said Ships and Vessels for the Recovery of their Wages, from the Time of their shipping themselves unto the Time they quit the said Ships and Vessels: And whereas many of the said Seamen and Mariners will neglect their Duty when on board at Sea, and detain their Ships and Vessels in foreign Parts, which puts the said Owners of Ships and Vessels to very great Difficulties and Expenses, to get others in their Stead, to bring their Ships and Vessels home; and afterwards such Seamen and Mariners insist on recovering their Wages, notwithstanding their voluntary Desertion; all which is a great Disencouragement to Trade and Navigation: Therefore, in order to prevent such Practices for the future, may it please your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of June One Thousand Seven Hundred and Twenty-three, if that, pursuant to any Master or Commander of any Ship or Vessel bound to Parts beyond the Seas, to carry any Seamen or Mariners, except the Apprentices or Apprentices, to Sea, from any Port or Place where he or they were engaged or shipped, to proceed on any Voyage to Parts beyond the Seas, without first coming to an Agreement or Contract with such Seamen or Mariners for their Wages, which Agreement or Contract shall be made in Writing,

2 Geo. II. c. 36.

Made perpetual by
2 Geo. III. c. 81.

No Masters of Ships, to proceed on a Voyage without agreeing with the Mariners for

No. 10.
2 Geo II c 36

Apprentices ex-
cepted,

on Forfeiture of 5l.
for each Mariner.

Mariners to sign
the Agreement.

Penalty on Mari-
ners deserting.

Justices of the
Peace may com-
mit Deserters to
the House of Cor-
rection.

declaring what Wages each Seaman or Mariner is to have respectively during the whole Voyage, or for so long a Time as he or they shall ship themselves for; and also to express in the said Agreement or Contract the Voyage for which such Seaman or Mariner was shipped, to perform the same; and in case any Master or Commander of any Ship or Vessel shall carry out any Seaman or Mariner, except his Apprentice or Apprentices, upon any Voyage to Parts beyond the Seas, without first entering into such Agreement or Contract as aforesaid, and he and they signing the same, such Master or Commander shall forfeit and pay the Sum of five Pounds for every such Seaman or Mariner which he shall carry to Sea, without entering into such Agreement in Writing as aforesaid, to the Use of *Greenwich Hospital*, to be recovered upon Information on the Oath of one or more Witness or Witnesses, before any one or more of his Majesty's Justice or Justices of the Peace, who are hereby authorized and required to issue out his or their Warrant or Warrants to bring before him or them such Master or Commander of any such Ship or Vessel; and in case he or they refuse to pay such Penalty or Forfeiture as aforesaid, to grant his or their Warrant or Warrants, to levy the same by Distress and Sale of the Offender's Goods; and in case no Distress can be found, to commit the Offender or Offenders to the common Gaol of the City, County, Town or Place, there to remain until he or they shall pay the same

II. And be it further enacted, That if any Seaman or Mariner enter or ship himself on board any Merchant Ship or Vessel on any intended Voyage for Parts beyond the Seas, he and they so entering themselves as aforesaid, shall, and they are hereby obliged to sign such Agreement or Contract within three Days after he or they shall have entered themselves on board any Ship or Vessel, in order to proceed on any Voyage as aforesaid; which Agreement or Agreements, or Contracts, after the Signing thereof, shall be conclusive and binding to all Parties, for and during the Time or Times so agreed or contracted for, to all Intents and Purposes; any Custom or Usage to the contrary in any wise notwithstanding.

III. And be it enacted and declared by the Authority aforesaid, That in case any Seaman or Mariner shall desert or refuse to proceed on the Voyage on board any Ship or Vessel, bound to Parts beyond the Seas as aforesaid, or that shall desert from the Ship or Vessel to which he or they shall belong, in Parts beyond the Seas, after he or they shall have signed such Contract or Agreement, he or they shall forfeit to the Owners of such Ship or Vessel the Wages which shall be due to him or them at the Time of his or their deserting from such Ship or Vessel, or obstinately refusing to proceed on such Voyage.

IV. And be it further enacted, That in case any such Seaman or Mariner shall desert or absent himself from any such Ship or Vessel, after he or they have entered into and signed such Contract or Agreement to proceed upon any Voyage to Parts beyond the Seas as aforesaid, upon Application made to any of his Majesty's Justices of the Peace, within their respective Jurisdictions, by the Master or Commander, Owner or Agent, or other Person or Persons having Charge, of the said Ship or Vessel to which such Seaman or Mariner do belong, it shall and lawfully be lawful for such Justice or Justices, and they are hereby required to issue forth his or their Warrant or Warrants to apprehend such Seaman or Mariner; and in case he or they shall refuse to appear before him or them, or shall refuse to go into Contract or Agreement as aforesaid, and shall not give Satisfaction of such Justice or Justices, then to commit such Seaman or Mariner to the House of Correction, there to be kept for any Term of Days, not less than thirty Days, nor less than thirty Days, nor less than thirty Days, any Thing to the contrary notwithstanding.

V. And be it enacted by the Authority aforesaid, That in case any Seaman or Mariner shall absent himself from the Ship or Vessel to which he shall belong, without Leave from the Master or Commander, or other Chief Officer, having the Charge of such Ship or Vessel, every such Seaman or Mariner shall, for every such Day's Absence, forfeit two Days' Pay, to the Use of Greenwich Hospital, to be recovered, applied and disposed of as is herein after directed by this Act.

No. 10.
2 Geo. II. c. 36.
Penalty on Mariners absenting from the Ship without Leave.

VI. And whereas Seamen and Mariners, after their Ships Arrival at their unloading Port in Great Britain, oftentimes leave the Ships and Vessels before they are unladen, or before the said Seamen and Mariners are discharged by the Masters or Commanders of such Ships and Vessels; In order to prevent such Practices for the future; Be it further enacted by the Authority aforesaid, That in case any Seaman or Mariner, not entering into the Service of his Majesty, his Heirs and Successors, shall leave such Ship or Vessel, to which he or they belong, before he or they have a Discharge in Writing from the Master or Commander, or other Person having the Charge of such Ship or Vessel, he or they so leaving such Ship or Vessel shall forfeit one Month's Pay, to be recovered, applied and disposed of as is herein after directed.

Penalty for leaving the Ship before discharged.

VII. And be it further enacted by the Authority aforesaid, That upon the Arrival of any Ship or Vessel into Great Britain from Parts beyond the Seas, the Masters or Commanders of such Ships or Vessels shall be, and they are hereby obliged to pay the Seamen and Mariners belonging to such Ships or Vessels their Wages, if demanded, in thirty Days after the said Ships or Vessels being entered at the Custom-house, except in case where a Covenant shall be entered into to the contrary, or at the Time the said Seamen and Mariners shall be discharged, which shall first happen; if demanded, deducting out of such Wages the Penalties and Forfeitures by this Act imposed, under the Penalty of paying to each Seaman or Mariner that shall be unpaid, contrary to the true Intent and Meaning of this Act, twenty Shillings over and above the Wages that shall be due to each Person, to be recovered by the same Means and Methods as the Wages may be recovered; and such Payment of Wages aforesaid shall be good and valid in Law, notwithstanding any Action, Bill of Sale, Attachment or Incumbrance whatsoever.

Masters to pay Mariners' Wages in 30 Days after coming home.

VIII. And be it further enacted, That no Seaman or Mariner by entering into or signing such Contract or Agreement as aforesaid, shall be deprived of or hindered from using any Means or Methods for the Recovery of Wages against any Ship, the Master, or Owners thereof, which he may now lawfully make use of, and that in all Cases where it shall or may be necessary that the Contract or Agreement in Writing aforesaid should be produced in Court, no Obligation shall lie on any Seaman or Mariner to produce the same, but on the Master, Owner or Owners of the Ship for which the Wages shall be demanded; and no Seaman or Mariner shall fail in any Suit, Action or Process for Recovery of Wages for want of such Agreement or Contract being produced; any Law, Usage or Custom to the contrary notwithstanding.

In case of Suit for Wages, Master obliged to produce the Agreement.

And Seamen not deprived of other Remedies.

IX. And be it further enacted, That the Masters or Commanders, or Owners of any Ships or Vessels shall and they hereby have full Power to deduct out of the Wages of any Seaman or Mariner, all the Penalties and Forfeitures to be incurred by this Act, and to enter them in a Book or Books to be kept for that Purpose, and to make Oath, if required to the Truth thereof, which Book or Books shall be signed by the said Master or Commander of each Ship or Vessel respectively, and two or more principal Officers belonging to such

Masters to deduct out of Seamen's Wages all Penalties due to Greenwich Hospital.

No. 10.
Geo. II. c. 36.

Ships or Vessels, setting forth that the Penalties and Forfeitures contained in such Book or Books, are the whole Penalties and Forfeitures stopt from any Seamen or Mariners during the whole Voyage; which Penalties and Forfeitures (except the Forfeiture of Wages to the Owners on the Desertion of any Seaman or Mariner, or on refusing to proceed on the Voyage) shall go to and be applied to the Use of *Greenwich Hospital*, and not otherwise, to be paid and accounted for by the Masters and Commanders of Ships and Vessels coming from Parts beyond the Seas, to the same Officer or Officers, at any Port or Place, who collects the Six-pence *per Month*, deducted out of Seamen's Wages, for the Use of the said Hospital; which Officer shall have and hereby hath full Power to administer an Oath to every Commander or Master respectively touching the Truth of such Penalties and Forfeitures, to be paid, applied and disposed of as aforesaid.

Forfeitures to be paid to the Hospital within three Months.

X. And be it further enacted, That in case any Masters or Commanders, or Owners of any Ships or Vessels shall deduct out of the Wages of any Seamen or Mariners, any of the Penalties and Forfeitures, which by this Act are directed to be deducted and applied to and for the Use of *Greenwich Hospital*, and shall not pay the Money so deducted to some Officer or Officers who collect the Six-pence *per Month*, deducted out of Seamen's Wages for the Use of the said Hospital, in the Port or Place where such Deduction shall be made, within three Months after such Deduction; every Person so neglecting to pay the Money so deducted as aforesaid, shall forfeit and pay treble the Value thereof to the Use of the said Hospital; which, together with the Money deducted as aforesaid, shall and may be recovered by the same Means and Methods as any Penalties and Forfeitures for not duly paying the said Six-pence *per Month* can or may be recovered.

Publick Act.

XI. And be it further enacted, That this Act shall be deemed and taken to be a publick Act; and all Judges and Justices are hereby obliged to take Notice of it as such, without special pleading the same.

(Continuation of Act continued by 23 Geo. II. c. 31, and made perpetual by 7 Geo. III. c. 3, which extends it to America.

XII. Provided always, and it is hereby enacted, That this Act shall continue and be in Force for the Space of five Years, to be reckoned from the said twenty-fourth Day of *June* One Thousand Seven Hundred and Twenty-nine, and from thence to the End of the then next Session of Parliament, and no longer.

Act not to debar seamen from entering into his Majesty's Service.

XIII. Provided, That nothing in thing in this Act contained shall extend or be construed to extend to debar any Seaman or Mariner belonging to any Merchant Ship or Vessel, from entering or being entred into the Service of his Majesty, his Heirs and Successors, on board any of his or their Ships or Vessel; nor shall such Seaman or Mariner, for such Entry, forfeit the Wages due to him, during the Term of his Service in such Merchant Ship or Vessel; nor shall such Entry be deemed a Desertion.

No. 14.

7 George II. c. 15.—An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners.

7 Geo. II. c. 15.

WHEREAS it is of the greatest Consequence and Importance to this Kingdom, to promote the Increase of the Number of the Number of Ships and Vessels, and to prevent any Discouragement to Merchants and others from being interested and concerned therein: And whereas it has been held, that in many Cases Owners

of Ships or Vessels are answerable for Goods and Merchandize shipped or put on board the same, although the said Goods and Merchandize, after the same have been so put on board, should be made away with by the Master or Mariners of the said Ships or Vessels, without the Knowledge or Privy of the Owner or Owners, by Means whereof Merchants and others are greatly discouraged from adventuring their Fortunes, as Owners of Ships and Vessels, which will necessarily tend to the Prejudice of the Trade and Navigation of this Kingdom: Therefore for ascertaining and settling how far Owners of Ships and Vessels shall be answerable for any Gold, Silver, Diamonds, Jewels, precious Stones, or other Goods or Merchandize, which shall be made away with by the Masters or Mariners, without the Privy of the Owners thereof; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person or Persons who is, are or shall be Owner or Owners of any Ship or Vessel shall be subject or liable to answer for or make good to any one or more Person or Persons any Loss or Damage by reason of any Imbezzlement, secreting or making away with (by the Master or Mariners, or any of them) of any Gold, Silver, Diamonds, Jewels, precious Stones, or other Goods or Merchandize, which from and after the twenty-fourth Day of June which shall be in the Year of our Lord One Thousand Seven Hundred and Thirty-four, shall be shipped, taken in or put on board any Ship or Vessel, or for any Act, Matter or Thing, Damage or Forfeiture, done, occasioned or incurred from and after the said twenty-fourth Day of June One Thousand Seven Hundred and Thirty-four, by the said Master or Mariners, or any of them, without the Privy and Knowledge of such Owner or Owners, further than the Value of the Ship or Vessel, with all her Appurtenances, and the full Amount of the Freight due or to grow due for and during the Voyage, wherein such Imbezzlement, secreting or making away with as aforesaid, or other Malversation of the Master or Mariners shall be made, committed or done; any Law, Usage or Custom to the contrary thereof in any wise notwithstanding.

II. And it is hereby further enacted by the Authority aforesaid, That if several Freighters or Proprietors of any such Gold, Silver, Diamonds, Jewels, precious Stones or other Goods or Merchandize, shall suffer any Loss or Damage by any of the Means aforesaid in the same Voyage, and the Value of the Ship or Vessel, with all her Appurtenances, and the Amount of the Freight due or to grow due during such Voyage, shall not be sufficient to make full Compensation to all and every of them, then such Freighters or Proprietors shall receive their Satisfaction thereof in Average, in Proportion to their respective Losses or Damages: And in every such Case it shall and may be lawful to and for such Freighters or Proprietors, or any of them, on Behalf of himself and all other such Freighters or Proprietors, or to and for the Owners of such Ship or Vessel, or any of them, on Behalf of himself and all the other Part-owners of such Ship or Vessel, to exhibit a Bill in any Court of Equity for a Discovery of the total Amount of such Losses or Damages, and also of the Value of such Ship or Vessel, Appurtenances and Freight, and for an equal Distribution and Payment thereof amongst such Freighters or Proprietors, in Proportion to their respective Losses or Damages, according to the Rules of Equity.

III. Provided always, That if any such Bill shall be exhibited by or on the Behalf of the Part-owners of such Ship, the Plaintiff or Plaintiffs shall annex an Affidavit to such Bill or Bills, that he or they do not collude with any of the Defendants thereto, and shall thereby

No. 11.
7 Geo. II. c. 15.

Owners of Ships liable only to forfeit Value of Ship & Freight, for Embezzlements committed without their Knowledge.

If several Proprietors suffer by Imbezzlement, and Value of Ship, &c. be not sufficient to compensate the Loss, their Proportions to be determined by Average; and the Freighters or Owners may exhibit a Bill for discovering Amount of such Losses, &c.

Part owners exhibiting such Bill, to annex an Affidavit, that they do not collude with Defendants.

No. 11. offer to pay the Value of such Ship or Vessel, Appurtenances and Freight, as such Court shall direct; and such Court shall thereupon take such Method for ascertaining such Value, as to them shall seem just, and shall direct the Payment thereof in like Manner as is now used and practised in Cases of Bills of Interpleader.

Act not to lessen any Remedy which Person aggrieved hath for Imbezementments.

IV. Provided always, and it is hereby declared and enacted, That nothing in this present Act contained shall extend or be construed to extend to impeach, lessen or discharge any Remedy which any Person or Persons now hath, or shall or may hereafter have against all, every or any the Master and Mariners of such Ship or Vessel, for or in respect of any Imbezementment, secreting or making away with any Gold, Silver, Diamonds, Jewels, precious Stones or Merchandize, shipped or loaded on board such Ship or Vessel, or on Account of any Fraud, Abuse or Malversation of and in such Master and Mariners respectively; but that it shall and may be lawful to and for every Person or Persons so injured or damaged to pursue and take such Remedy for the same, against the said Master and Mariners respectively, as he or they might have done before the making of this Act.

No. 12.

20 George II. c. 38.—An Act for the Relief and Support of maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain or drowned in the Merchants Service.

No. 13.

26 George II. c. 19.—An Act for enforcing the Laws against Persons who shall steal or detail shipwrecked Goods; and for the Relief of Persons suffering Losses thereby.

26 Geo. II. 18.

Persons convicted of plundering shipwrecked Goods, &c. to suffer Death.

WHEREAS notwithstanding the good and salutary Laws now in Being against plundering and destroying Vessels in Distress, and against taking away shipwrecked, lost or stranded Goods, many wicked Enormities have been committed; to the Disgrace of the Nation, and to the grievous Damage of Merchants and Mariners of our own and other Countries: For Remedy thereof, be it enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons shall plunder, steal, take away or destroy any Goods or Merchandize, or other Effects, from or belonging to any Ship or Vessel of his Majesty's Subjects; or others, which shall be in Distress, or which shall be wrecked, lost, stranded or cast on Shore in any Part of his Majesty's Dominions: (Whether any living Creature be on board such Vessel or not) or any of the Furniture, Tackle, Apparel, Provision, or Part of such Ship or Vessel; or shall beat or wound with Intent to kill or destroy, or shall otherwise wilfully obstruct the Escape of any Person endeavouring to save his or her Life from such Ship or Vessel, or the Wreck thereof; or if any Person or Persons shall put out any false Light or Lights with Intention to bring any Ship or Vessel into Danger; then such Person or Persons so offending shall be deemed guilty of Felony, and being lawfully con-

victed thereof, shall suffer Death as in Cases of Felony, without Benefit of Clergy

No. 13.
26 Geo II c. 19.

II. Provided always, and be it enacted by the Authority aforesaid, That when Goods or Effects of small Value shall be stranded, lost or cast on Shore, and shall be stolen without Circumstances of Cruelty, Outrage or Violence; then and in such Cases it shall be lawful for any Person or Persons to prosecute for such Offence by way of Indictment for Petit Larceny; and the Offenders being thereof lawfully convicted, shall suffer such Punishment as the Laws in Cases of Petit Larceny do enjoin or require.

Where Goods of small Value be stolen, Petit Larceny.

III. And be it further enacted by the Authority aforesaid, That it shall be lawful for any one or more of his Majesty's Justices of the Peace, upon Information made before him or them upon Oath (which Oath all Justices are hereby empowered to administer) of any Part of the Cargo or Effects whatsoever belonging to any Ship or Vessel lost or stranded upon or near the Coasts aforesaid, being unlawfully carried or conveyed away, or concealed in any House, Out-house, Barn or other Place, or of some reasonable Cause of Suspicion thereof, to issue his or their Warrant or Warrants for the searching of such House, Out-house, Barn or other Place, as in other Cases of stolen Goods: And if the same shall be found in such House, Out-house, Barn, or other Place or Places, or upon or in the Custody or Possession of any Person or Persons not legally authorized or intitled to keep and withhold the same; and the Owner or Occupier of such House, Out-house, Barn or other Place, or the Person or Persons upon whom, or in whose Custody or Possession the same shall be found, shall not immediately, upon Demand, deliver the same to the lawful Owner or Owners thereof, or to such other Person or Persons as shall be lawfully authorized to demand the same; or shall not give a good Account, to the Satisfaction of the said Justice or Justices, how he, she or they came by, or became possessed thereof; it shall and may be lawful to and for such Justice or Justices, upon Proof of such Refusal, and he and they is and are hereby required to commit the said Offender or Offenders to the common Gaol for the Space of six Months, or until he, she or they shall have paid to such lawful Owner or Owners, or to the Person or Persons lawfully authorized to receive the same, treble the Value of the Goods or Things so by him, her or them unlawfully detained.

Justices upon Information of shipwrecked Goods being stolen, &c. to issue Search Warrants.

IV. And be it further enacted by the Authority aforesaid, That if any Person or Persons shall offer or expose to Sale any Goods or Effects whatsoever belonging to any Ship or Vessel lost, stranded or cast on Shore as aforesaid, and unlawfully taken away, or reasonably suspected so to have been; then and in every such Case it shall be lawful for the Person or Persons to whom the same shall be so offered for Sale, or any Officer of the Customs or Excise, or any Constable, Headborough or Tythingman, or other Peace Officer, to stop, take and seize the said Goods and Effects; and that he or they shall, with all convenient Speed, carry the same, or give Notice of such Seizure to some one or more of his Majesty's Justice or Justices of the Peace; and if the Person or Persons who shall have offered the said Goods or Effects to Sale, or some other Person or Persons on his, her or their Behalf, shall not appear before the said Justice within ten Days next after such Seizure, and make out, to the Satisfaction of the said Justice, the Property of the said Goods or Effects to be in him, her or them, or in the Person or Persons by whom he, she or they, was or were employed to sell the same; then the said Goods or Effects shall, by Order of the said Justice, be forthwith delivered over to or for the Use of the rightful Owner or Owners thereof, upon Payment of a reasonable Reward for such Seizure (to be ascertained by the said

Goods offered to Sale, suspected to be shipwrecked, to be stoppt, &c.

No. 13.
25 Geo. II. c. 19

Justice) to the Person who seized the same; and such Justice shall and may commit the Person or Persons who so have offered or exposed the said Goods or Things to Sale as aforesaid to the common Gaol for the Space of six Months, or until he, she or they, shall have paid to such lawful Owner or Owners, or to the Person or Persons lawfully authorized to receive the same, treble the Value of the said Goods or Effects so by him, her or them unlawfully offered to Sale as aforesaid.

Persons who shall save, and carry any Vessel &c. and give Notice thereon; or who shall discover, &c.

V. And be it further enacted by the Authority aforesaid, That in case any Person or Persons not employed by the Master, Mariners or Owners, or other Persons lawfully authorized, in the Salvage of any Ship or Vessel, or the Cargo or Provision thereof, shall, in the Absence of Persons so employed or authorized, save any such Ship, Vessel, Goods or Effects, and cause the same to be carried, for the Benefit of the Owners or Proprietors, into Port, or to any near adjoining Custom-house or other Place of safe Custody, immediately giving notice thereof to some Justice of the Peace, Magistrate, or Custom-house or Excise Officer, or shall discover to any such Magistrate or Officer where any such Goods or Effects are wrongfully bought, sold or concealed; then such Person or Persons shall be entitled to a reasonable Reward for such Services, to be paid by the Masters or Owners of such Vessels or Goods, to be adjusted in case of Disagreement about the *Quantum*, in like Manner as the Salvage is to be adjusted and paid, by virtue of the Statute made in the twelfth Year of the Reign of her late Majesty Queen ANNE, intituled, *An Act for the preserving all such Ships and Goods thereof which have happened to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions, or else in the Manner hereinafter prescribed, as the Case shall require.*

12 Anne, st. 2,
c. 18.

Where any Vessel, &c. be stranded, public Notice to be given for a Meeting of the Sheriff, &c. who are to aid in saving the Vessel, &c. and to adjust the Salvage.

VI. And be it further enacted by the Authority aforesaid, That for the better ascertaining the Salvage to be paid in pursuance of this present Act, and the Act before-mentioned, and for the more effectual putting the same Acts in Execution, the Justice of the Peace, Mayor, Bailiff, Collector of the Customs, or chief Constable, who shall be nearest to the Place where any Ship, Goods or Effects shall be stranded or cast away, shall forthwith give public Notice for a Meeting to be held as soon as possible of the Sheriff or his Deputy, the Justices of the Peace, Mayors, or other chief Magistrates of Towns Corporate, Coroners and Commissioners of the Land-Tax, or any five or more of them, who are hereby required and empowered to give Aid in the Execution of this and the said former Act, and to employ proper Persons for the Saving of Ships in Distress, and such Ships, Vessels and Effects, as shall be stranded or cast away; and also to examine Persons upon Oath touching or concerning the same, or the Salvage thereof, and to adjust the *Quantum* of such Salvage, and distribute the same among the Persons concerned in such Salvage, in case of Disagreement among the Parties, or the said Persons; and that every such Sheriff, Justice of the Peace, Mayor, chief Magistrate, Coroner, Lord of a Manor, Under-Sheriff, or Commissioner of the Land-Tax, attending and being at such Meeting, shall be paid four Shillings a Day for his Expences in such Attendance out of the Goods and Effects saved by their Care or Direction.

If the Salvage be not paid, the Officer of the Customs may raise the same, &c.

VII. Provided always, and be it further enacted by the Authority aforesaid, That if the Charges and Rewards for Salvage, directed to be paid by the said Act of the twelfth Year of the Reign of her said late Majesty Queen ANNE, and by this present Act, shall not be fully paid, or sufficient Security given for the same within forty Days next after the said Services performed, then and in such Case it shall be lawful for the Officer of the Customs concerned in such Salvage, to borrow or raise so much Money as shall be sufficient to satisfy and pay such

Charges and Rewards, or any Part thereof then remaining unpaid, or not secured as aforesaid, by or upon one or more Bill or Bills of Sale, under his Hand and Seal, of the Ship or Vessel, or Cargo saved, or such Part thereof as shall be sufficient, redeemable nevertheless upon Payment of the principal Sum so borrowed, and Interest for the same after the Rate of four Pounds *per Centum per Annum*

No. 13.

25 Geo. II. c. 19.

VIII. And be it further enacted by the Authority aforesaid, That if Oath shall be made before any Magistrate, lawfully impowered to take the same, of any such Plunder or Theft, and the Examination in Writing thereupon taken shall be delivered to the Clerk of the Peace of the County, Riding or Division wherein such Fact shall be committed, or to his Deputy; or if Oath shall be made before any such Magistrate of the breaking any Ship, contrary to the aforesaid Act made in the twelfth Year of the Reign of her said late Majesty Queen ANNE, and the Examination in Writing thereupon taken shall be delivered to such Clerk of the Peace, or his Deputy; then such Clerk of the Peace shall cause the Offender or Offenders in any of the said Cases to be forthwith prosecuted for the same, either in the County where the Fact shall be committed, or in any County next adjoining; in which adjoining County any Indictment may be laid by any other Prosecutor; and if the Fact be committed in *Wales*, then the Prosecution shall or may be carried on in the next adjoining *English* County; and the necessary Charges of such Prosecutions by the Clerk of the Peace shall be paid by the Treasurer of the County, Riding or Division where the Fact shall be committed, to such Amount as the Justices of the Peace in their General or Quarter Sessions shall order and ascertain the same; and if such Clerk of the Peace shall neglect or refuse to carry on such Prosecution in due Manner, he shall forfeit One Hundred Pounds for every such Offence, to any Person or Persons who shall sue for the same by Action of Debt, Bill, Plaint or Information, in any of his Majesty's Courts of Record at *Westminster*; in which Action no Essoin, Protection, Wager of Law, or more than one Imparance shall be allowed.

Where Oath shall be made of Plunder, &c. contrary to 12 Anne. st 2. c. 13. and Examination to be delivered to Clerk of the Peace, he is to prosecute

IX. And be it further enacted by the Authority aforesaid, That the Commissioners of the Land-Tax, the Deputy-Sheriff, the Coroner, and the Officers of Exise in each County, Riding and Division, shall be proper Officers for putting in Execution this present Act, and the said Act made in the twelfth Year of the Reign of her late Majesty Queen ANNE, together with those therein respectively named for that Purpose.

Officers for putting this and 12 Anne. st 2. c. 13. in Execution.

X. And whereas by an Act made in the third Year of the Reign of his late Majesty King GEORGE the First, (intituled, *An Act for the better regulating of Pilots for the conducting of Ships and Vessels from Dover, Deal, and the Isle of Thanet, up the Rivers of Thames and Medway*, it is enacted, That the Lord Warden of the Cinque Ports for the Time being shall nominate and appoint, by an Instrument under his Hand and Seal, three or more substantial Persons in each of the Cinque Ports, two ancient Towns and their Members, to adjust and determine, within the Space of twelve Hours, Differences which shall or may arise within the Jurisdiction of the Cinque Ports relating to the Salvage of Anchors and Cables from which Vessels shall or may be forced by Extremity of Weather: Now it is hereby enacted, That the Lord Warden of the Cinque Ports for the Time being, and the Lieutenant of *Dover Castle* for the Time being, and the Deputy Warden of the Cinque Ports for the Time being, and the Judge Official and Commissary of the Court of Admiralty of the Cinque Ports, two ancient Towns, and the Members thereof, for the Time being, and all and every of them, and all and every other Person and Persons appointed or to be appointed by

3 Geo. 2. c. 13.

Officers for putting this and 12 Anne. in Execution within the Jurisdiction of the Cinque Ports, &c.

No. 13.
28 Geo 11, c. 19.

the Lord Warden of the Cinque Ports for the Time being, pursuant to the said Act made made in the third Year of his late Majesty's Reign, shall be the Persons to put in Execution, within the Liberty and Jurisdiction of the Cinque Ports, two ancient Towns, and their Members, all the Powers and Authorities given and granted in and by this Act, and in and by the before-mentioned Act of Parliament made in the twelfth Year of her said late Majesty Queen Anne; and also in and by the said Act made in the fourth Year of the Reign of his late Majesty King George the First; and also shall and may execute, perform and do, within the Jurisdictions aforesaid, all the Acts, Matters and Things contained in this and the before-mentioned Statutes, in like and as full and ample Manner, to all Intents and Purposes, as any Justice or Justices of Peace, or any other Person or Persons, are by this and the said Acts appointed or authorized to do in any other Part of the Kingdom.

Persons convicted of assaulting any Magistrate, &c. in the Salvage, to be transported.

XI. And be it further enacted by the Authority aforesaid, That if any Sheriff or his Deputy, Justice of the Peace, Mayor or other Magistrate, Coroner, Lord of a Manor, Commissioner of the Land-Tax, Chief Constable or Petty Constable, or other Peace Officer, or any Custom-house or Excise Officer, or other Person lawfully authorized, shall be assaulted, beaten and wounded, for or on account of the Exercise of his or their Duty, in or concerning the Salvage or Preservation of any Ship or Vessel in Distress, or of any Ship or Vessel, Goods or Effects, stranded, wrecked, or cast on Shore, or lying under Water, in any of his Majesty's Dominions, then any Person or Persons so assaulting, beating and wounding, shall upon Trial and Conviction, by Indictment at the Assizes, or General Gaol-Delivery, or at the General or Quarter Sessions for the County, Riding or Division, where such Offence shall be committed, be transported for seven Years to some of his Majesty's Colonies in America, and shall be subject to such subsequent Punishment, in case of Return before that Time, as other Persons under Sentence of Transportation are by the Law subjected unto.

Justice in Absence of Sheriff may take Force to repress Violence, &c.

XII. And be it further enacted by the Authority aforesaid, That it shall be lawful for any one or more of his Majesty's Justices of the Peace, in case of Need, and in the Absence of the High Sheriff, to take sufficient Power of the County, to repress all unjust Violence, and duty to enforce the Execution of this Act.

Persons empowered to give Orders, where any shall be assembled in case of a Shipwreck, &c.

XIII. And to prevent Confusion among Persons assembled to save any Ship, Vessel, Goods or Effects, as aforesaid, either for want of proper Orders, or by contradictory Orders; Be it further enacted, That all Persons so assembled shall conform in the first Place to the Orders of the Master or other Officers or Owners, or other Persons employed by them; and for want of their Presence or Directions, then in the next Place to the Orders of the Persons authorized by this Act, or the aforesaid Act of Queen Anne, in the like Manner, in the following Subordination, as any of the said Persons shall happen to be present; that is to say, in the first Place, to the Orders of any Officer or Officers of the Customs; then of any Officer or Officers of the Excise; then of the Sheriff or his Deputy; then of any Justice or Justices of the Peace; then of the Mayor or chief Magistrate of any Corporation; then of the Coroner; then of any Commissioners of the Land-Tax; then of any Chief Constable; then of any Petty Constable or other Peace Officer: And any Person whatsoever acting knowingly and wilfully contrary to such Orders, shall forfeit any Sum not exceeding five Pounds, to be levied by Warrant of one Justice of the Peace; and in case of Non-payment the Offender shall be committed to the House of Correction for any Time not exceeding three Months.

Persons acting contrary to Orders forfeit 5l.

XIV. Provided always, and it is hereby enacted, That neither this Act, nor any Thing herein contained, shall any way extend to deprive or prejudice his Royal Majesty, his Heirs or Successors, or any claiming under them, or any Patentee or Grantee of the Crown, or any Lord or Lords of any Manor or Manors, or other Person whomsoever, of or in relation to any Right which they or any of them have or may have or lawfully claim to any Wreck or Wrecks, or any Goods which are or shall be *flotsam, jetsam, or lagan*, but that such respective Rights shall be enjoyed in as full, ample and beneficial a Manner, in every Respect, as if this Act had never been made.

No. 13.
26 Geo. II. c. 19.
Rights of the
Crown, &c.

XV. And be it further enacted by the Authority aforesaid, That the Officer of the Customs who shall act in the preserving of any Ship or Vessel in Distress, or the Cargo thereof, shall, as soon as conveniently may be, cause or procure all Persons belonging to the said Ship or Vessel, and others who can give any Account thereof, or of the Cargo thereof, to be examined upon Oath before some Justice of the Peace, as to the Name or Description of the said Ship or Vessel, and the Names of the Master, Commander, or chief Officer and Owners thereof, and of the Owners of the said Cargo, and of the Ports or Places from or to which the said Ship or Vessel was bound, and the Occasion of the said Ship's Distress; which Examination the said Justices are hereby required to take down in Writing, and they shall deliver a true Copy thereof, together with a Copy of the said Account of the Goods, to the said Officer of the Customs, who shall forthwith transmit the same to the Secretary of the Admiralty for the Time being, who shall publish or cause to be published in the next *London Gazette*, so much thereof as shall or may be necessary for the Information of the Persons interested or concerned therein.

Examination on
Oath to be taken of
the Ship's Name,
&c.

XVI. And be it further enacted by the Authority aforesaid, That the before-mentioned Act of Parliament made in the twelfth Year of her said late Majesty Queen ANNE; and also an Act made in the fourth Year of the Reign of his late Majesty King GEORGE the First, for enforcing and making perpetual the before-mentioned Act, and for inflicting the Punishment of Death on such as shall wilfully burn or destroy Ships, shall in all Things remain in full Force, save only so far as the same are altered or changed by this present Act.

12 Anne, Stat. 2.
c. 18 and 3 Geo. I.
c. 12. to be in
Force where not
altered.

XVII. And be it further enacted by the Authority aforesaid, That this Act shall take place from the twenty-ninth Day of September in the Year of our Lord One Thousand Seven Hundred and Fifty-three.

Commencement
of this Act.

XVIII. Provided, That nothing in this Act contained shall extend or be construed to extend to that Part of *Great Britain* called *Scotland*.

Not to extend to
Scotland.

No. 14.

13 George III. c. 26.—An Act for preventing Abuses in the Sale of Shares of *British* built Ships to Foreigners.

No. 15.

21 George III. c. 39.—An Act for further securing the Property of the Owners in such Ships or Vessels as are liable to Forfeiture for importing Spirits or other Goods, by the Misconduct of the Masters, Mates, and Seamen.

WHEREAS by an Act, made in the nineteenth Year of the 21 Geo III c. 39
Reign of his present Majesty, intituled, *An Act for the more* 19 Geo III c. 63.

No. 15.
21 Geo. III. c. 39.

effectually preventing the pernicious Practices of Smuggling in this Kingdom, and for indemnifying Persons who have been guilty of Offences against the Laws of the Customs and Excise, upon the Terms therein mentioned, it is, amongst other Things, enacted, That where any foreign Brandy, or other foreign Spirituous Liquors, shall be imported or brought into Great Britain, or into any Port, Harbour, Haven, or Creek thereof, from any Part of Europe, in any Vessel or Cask which shall not contain sixty Gallons at the least (excepting only for the Use of the Seamen then belonging to and on board the Ship or Vessel in which the same shall be imported, not exceeding two Gallons for each Seaman), then not only the said Brandy, and other foreign Spirituous Liquors, but also the Ship or Vessel in which the same shall be so imported, of whatever Burthen the same may be, with all her Guns, Furniture, Ammunition, Tackle, and Apparel shall be forfeited and lost: And whereas, by the said recited Act, it is further enacted, That when any Tea, Coffee, foreign Brandy, or other foreign Spirituous Liquors, are liable to Forfeiture for being found on board any Ships or Vessels, coming or arriving from foreign Parts, at Anchor, or hovering within the Limits of any of the Ports of this Kingdom, or within two Leagues of the Coast thereof, or for having been discovered to have been within the Limits of any Port contrary to any Act of Parliament now in force, the Ship or Vessel, if coming or arriving from any Part of Europe, on board of which such Goods shall be so found, together with all her Guns, Furniture, Ammunition, Tackle, and Apparel, shall be forfeited, provided such Ship or Vessel doth not exceed the Burthen of two hundred Tons: And whereas, by the aforesaid in Part recited Act, and several other Acts of Parliament, Ships or Vessels of the Descriptions therein mentioned are liable to Seizure and Forfeiture for clandestinely importing, or having on board any Quantity of foreign Spirituous Liquors, Tea, or Coffee whatsoever, over and above the limited Quantities of such Goods now allowed by Law to be imported, whereby the Owners of such Ships or Vessels may sustain great Loss and Injury in their Property, by the Misconduct of the Masters, Mates, and Mariners, navigating such Ships or Vessels: And whereas it would not only tend to the further Security of the Owners of Ships or Vessels of all Descriptions, and of whatever Burthen the same may be, which by any Law now in force is liable to Forfeiture, but also be a Means to prevent the illicit Practice of Smuggling, if some further Punishment was inflicted upon the Masters, Mates, and Seamen, having the Charge and Command of such Ships or Vessels: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the twenty-fourth Day of June One Thousand Seven Hundred and Eighty-one, if the Master of any Ship or Vessel, of which he has the Charge and Command, shall clandestinely hide or conceal, or suffer to be clandestinely hid or concealed, by his Mate or Seamen, or any of them, in any Part of such Ship or Vessel, or in any Chest or other Thing belonging thereto, any Quantity of foreign Spirituous Liquors, over and above the Quantity of two Gallons for each Seaman on board, or any Quantity of Tea above the Weight of six Pounds, or any Quantity of Coffee above the Weight of nineteen Pounds; or if the Master of such Ship or Vessel shall clandestinely import, or suffer to be clandestinely imported therein, any such foreign or Spirituous Liquors, or any other uncustomed Goods whatsoever, whereby the Owner or Owners of such Ship or Vessel become liable to any

If the Master of any Vessel shall conceal, &c. foreign Spirits, &c. above a limited Quantity, or any other uncustomed Goods, he shall forfeit to his Owners all his Wages, &c.

Penalties, or whereby such Ship or Vessel itself is liable to be forfeited, No. 15.
 the Master of such Ship or Vessel shall not only forfeit to the Owner ²¹ Geo. III. c. 39.
 or Owners of such Ship or Vessel all his Wages that shall be then due
 to him, but shall also forfeit Treble the Value of all such foreign
 Spirituous Liquors, Tea, Coffee, or any other uncustomed Goods
 whatsoever, over and above the Penalties to which the Master of such
 Ship or Vessel shall be subject and liable by any of the Laws now in
 force; which said Penalties of Treble the Value of such Goods so
 inflicted by this Act, as aforesaid, shall be recovered of the said Master
 by, and shall go to, the Owner or Owners of such Ship or Vessel,
 and to no other Person whatsoever.

II. And be it further enacted by the Authority aforesaid, That if
 the Mates or Seamen, serving on board any Ship or Vessel of any
 Burthen whatsoever, shall clandestinely hide or conceal on board
 thereof, or shall import any Quantity of foreign Spirituous Liquors
 whatsoever (over and above the ordinary Allowance of two Gallons
 for each Seaman on board), or any Quantity of Tea above the Weight
 of six Pounds, or any Quantity of Coffee above the Weight of nine-
 teen Pounds, then such Mates or Seamen, or any of them, so offend-
 ing therein, shall forfeit, to the Owner or Owners of such Ship or
 Vessel, all the Wages that shall be then due to him or them, and shall
 also forfeit the Sum of ten Shillings each for every Gallon of such
 foreign Spirituous Liquors, and ten Shillings a Pound for every Pound
 of Tea, and also a like Sum of ten Shillings for every Pound of such
 Coffee, so by them clandestinely concealed or imported, over and above
 the Quantities of such Goods now limited by Law to be imported.

If Mates or Sea-
 men shall conceal,
 &c. they forfeit
 their Wages, and
 also, &c.

III. And be it further enacted by the Authority aforesaid, That
 if such Mates or Seamen shall commit such Offences as aforesaid, or
 any of them, in Time of War, and which, according to the true
 Intent and Meaning of this or any other Act, they are restrained from
 committing, it shall and may be lawful to and for the Owner of such
 Ship or Vessel to send such Mates or Seamen, or any of them, on
 board some of his Majesty's Ships of War, there to serve for the
 Space of three Years, except such as are old, disabled or otherwise
 unfit for such Service.

IV. And be it further enacted by the Authority aforesaid, That
 this Act shall be printed, put up, and continued on some conspicuous
 Part of every *British* Ship or Vessel trading to or from any Port of this
 Kingdom; and that wherever the said printed Clauses shall be
 damaged, defaced, or destroyed, the Master of such Ship or Vessel
 shall cause the same to be immediately replaced, under the Penalty of
 one Shilling a Day for every Day during such Omission thereof; to
 be recovered of the said Master by, and be paid to, the Owner or
 Owners of such Ship or Vessel, by virtue of a Warrant under the
 Hands and Seals of one or more of his Majesty's Justices of the
 Peace.

A printed Copy
 of this Act to be
 put up on some
 conspicuous Part
 of every British
 trading Vessel.

V. And be it further enacted by the Authority aforesaid, That if
 such Mates or Seamen, who shall be so disabled from serving in any
 of his Majesty's Ships of War in Time of War, as aforesaid, or if
 such or any other Mates or Seamen shall be found offending against the
 Provisions of this Act in Time of Peace, and shall neglect or refuse to
 pay the aforesaid Penalties, being duly convicted thereof, or shall not
 have sufficient Effects to answer the same, it shall and may be lawful
 (at the Instance of the Owner or Owners of such Ship or Vessel) for
 one or more of his Majesty's Justices of the Peace, by Warrant under
 his or their Hands and Seals, to commit such Offender or Offenders to
 to the County Gaol, where such Offence shall be committed, or
 where such Offender or Offenders shall be apprehended or taken, for
 the Space of three Months, and not less than six Weeks.

Mates or Seamen
 who shall refuse
 to pay the Penal-
 ties, &c. may be
 committed for 3
 Months.

No. 15.
21 Geo. III. c. 25.
Justices may mitigate Penalties.

VI. And it is hereby further enacted by the Authority aforesaid, That it shall and may be lawful to and for the said Justice or Justices to mitigate, compound, or lessen any of the Penalties incurred under this Act, as as such Mitigation do not extend to remit above one Moiety or Half Part of the said Penalties respectively.

Certiorari, &c.

VII. And it is hereby further enacted by the Authority aforesaid, That no Order which shall be made by the said Justice, or Justices of the Peace by virtue or in pursuance of this Act, or any other Proceedings to be had, touching the Conviction or Convictions of any Offender or Offenders against this Act, shall be quashed or vacated, or be removed or removeable by *Certiorari*, or any other Writ or Process whatsoever, into any of his Majesty's Courts of Record at *Westminster*, or to the General Quarter Sessions of the Peace; but that the Order and Determination of such Justice or Justices shall be final and conclusive in all Cases, and to all Intents and Purposes whatsoever.

Limitation of Actions.

VIII. And it is hereby further enacted by the Authority aforesaid, That if any Person or Persons shall at any Time or Times be sued or prosecuted for any Thing by him or them done or executed in pursuance of or by Colour of this Act, or any Matter or Thing in this Act contained, such Action or Prosecution shall be commenced within the Space of six Months after the Offence shall be committed; and such Person or Persons shall and may plead the General Issue, and give this Act and the Special Matter in Evidence, for his and their Defence, and that the same was done in pursuance and by Authority of the said Act: And if it shall appear so to have been done, then the Jury shall find for the Defendant or Defendants; and if the Plaintiff shall be nonsuited, or discontinue his Action after the Defendant or Defendants have appeared; or if Judgement shall be given, upon any Verdict or Demurrer, against the Plaintiff, the Defendant or Defendants shall may recover Treble Costs, and have the like Remedy for the same as the Defendant or Defendants hath or have in other Cases by Law.

General Issue.

Treble Costs.

No. 16.

22 George III. c. 25.—An Act to prohibit the ransoming of Ships or Vessels captured from his Majesty's Subjects, and of the Merchandize or Goods on board such Ships or Vessels. (1)

22 Geo. III. c. 25.

WHEREAS it is a common Practice, when Ships or Vessels are captured by the King's Enemies, or by other Persons committing Acts of Hostilities, for Persons to agree with the Captors for Ransom of the same; and for securing the stipulated Ransom, not only to give Hostages, but also to bind themselves, or the Owners, for the Payment thereof: And whereas the Practice of Ransoming is found, by Experience, to be liable to great Abuses, and there is Reason to apprehend that, upon the Whole, it operates more to the Disadvantage than for the Benefit of his Subjects: May it therefore please your Majesty that it may be enacted; and be it enacted by the

(1) A Purchase by Auction, after the Ship is taken into a neutral Port and condemned by a Sentence ruled to be illegal, is a Ransom within this Act, and the Money paid cannot be recovered from the Underwriters, (the Loss being holden an Average one).—*Havelock v. Northwold*, 8, T. R. 268. The Ransom Acts must be considered as remedial Laws, and, in the Construction of such Acts, it is the Rule to extend the Remedy so as to meet the Mischief.—see *Parsons v. Scott*, 2 Taunt. 363—*Webb v. Bader*, 3 Taunt. 6:

King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first of *June*, One Thousand Seven Hundred and Eighty-two, it shall not be lawful for any of his Majesty's Subjects to ransom, or to enter into Contract or Agreement, for ransoming any Ship or Vessel belonging to any of his Majesty's Subjects, or any Merchandize or Goods on board the same, which shall be captured by the Subjects of any State at War with his Majesty, or by any Persons committing Hostilities against his Majesty's Subjects.

No. 16.
22 Geo. III. c. 25.
Vessels, &c. captured by the Enemy not to be ransomed.

II. And be it further enacted, That all Contracts and Agreements which shall be entered into, and all Bills, Notes, and other Securities, which shall be given by any Person or Persons for Ransom of any such Ship or Vessel, or of any Merchandize or Goods on board the same, contrary to this Act, shall be absolutely void in Law, and of no Effect whatsoever.

All Contracts void.

III. And be it further enacted by the Authority aforesaid, That if any Person or Persons shall, after the first Day of *June* One Thousand Seven Hundred and Eighty-two, ransom, or enter into any Contract or Agreement for ransoming, any such Ship or Vessel, or any Merchandize or Goods on board the same, every Person so offending shall, for every such Offence, forfeit and lose the Sum of five hundred Pounds; to be recovered, with full Costs of Suit, by any Person or Persons who shall sue for the same, by Action of Debt, in any of his Majesty's Courts of Record at *Westminster*, in which Action no Essoin, Protection, Imparlanece, or Wager of Law, shall be allowed.

Penalty.

IV. Provided always, and be it further enacted, That nothing herein contained, shall extend, or be construed to extend, to make void any Contract or Agreement which shall be entered into, or any Bill, Note, or other Security, which shall be given, by any Master of a captured Ship or Vessel, or by any other Person or Persons on board or belonging to the same, for Ransom thereof, or of any Merchandize or Goods on board such Ship or Vessel; or to inflict any Penalty upon any Master of any captured Ship or Vessel, or any other Person or Persons on board or belonging to the same, for ransoming, or entering into any Contract or Agreement for ransoming such Ship or Vessel, or any Merchandizes or Goods on board the same, until after the Expiration of two Months from the passing of this Act, for any Ship or Vessel sailing from any foreign *European* Port; or until after the Expiration of four Months from the passing of this Act, for any Ship or Vessel sailing from any foreign Port out of *Europe*.

Limitation of this Act.

No. 17.

20 George III. c. 60.—An Act for the Increase and Encouragement of Shipping and Navigation..

p.

WHEREAS the Wealth and Strength of this Kingdom, and the Prosperity and Safety of every Part of the *British* Empire, greatly depend on the Encouragement given to Shipping and Navigation: And whereas it is proper that the Advantages hitherto given by the Legislature to Ships owned and navigated by his Majesty's Subjects, should from henceforth be confined to Ships wholly built and fitted in his Majesty's Dominions: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *August* One Thousand Seven

20 Geo. III. c. 60.
Preamble

No. 16.
26 Geo. III. c. 69

From August 1 1786, no Ship built out of his Majesty's Dominions, except Prizes, shall be intitled to the Privileges of a British Ship; but foreign Ships, built before May 1, 1786, not hereby to be deprived of the Privileges they now enjoy, &c.

Hundred and Eighty-six, no Ship or Vessel foreign-built (except such Ships or Vessels as have been or shall hereafter be taken by any of his Majesty's Ships or Vessels of War, or by any private or other Ship or Vessel, and condemned as lawful Prize in any Court of Admiralty), nor any Ship or Vessel built or rebuilt upon any foreign-made Keel or Bottom, in the Manner heretofore practised and allowed, although owned by British Subjects, and navigated according to Law, shall be any longer intitled to any of the Privileges or Advantages of a British-built Ship, or of a Ship owned by British Subjects; and that all the said Privileges and Advantages shall hereafter be confined to such Ships only as are wholly of the Built of *Great Britain* or *Ireland*, *Guernsey*, *Jersey*, and the *Isle of Man*, or of some of the Colonies, Plantations, Islands, or Territories in *Asia*, *Africa*, or *America*, which now belong, or at the Time of building such Ships or Vessels did belong, or which may hereafter belong to, or be in the Possession of his Majesty, his Heirs or Successors: Provided always, That nothing herein before contained shall extend, or be construed to extend, to prohibit such foreign-built Ships or Vessels only as, before the first Day of *May* One Thousand Seven Hundred and Eighty-six, did truly and without Fraud wholly belong to any of the People of *Great Britain* or *Ireland*, *Guernsey*, *Jersey*, and the *Isle of Man*, or of any of the aforesaid Colonies, Plantations, Islands, or Territories, as the Proprietors and right Owners thereof, and which shall be navigated according to Law, and shall also be registered in Manner herein after directed, from continuing to enjoy the Privileges and Advantages they have hitherto enjoyed, or from importing or exporting such Goods or Commodities as may now be legally imported or exported by such Ships or Vessels, into and from such Ports and Places as is now by Law allowed, and under such Rules, Regulations, and Restrictions as have heretofore been made touching such foreign-built Ships or Vessels, and subject and liable to all such Duties as have been imposed on any Goods or Commodities imported or exported as aforesaid in such foreign-built Ships or Vessels, by any Act or Acts of Parliament: And provided also, That nothing herein contained shall extend, or be construed to extend, to deprive any Ship or Vessel, which before the passing of this Act hath been built or rebuilt upon any foreign-made Keel or Bottom, and which, before the said first Day of *May* One Thousand Seven Hundred and Eighty-six, was duly registered as a British Ship, from continuing to enjoy any Privilege or Advantage to which such Ship or Vessel is now by any Law or Usage intitled; nor to prevent any such Ship or Vessel which shall have been begun to be repaired or rebuilt before the said first Day of *May* One Thousand Seven Hundred and Eighty-six, from being registered according to, and in pursuance of, this Act, by an Order under the Hands of the Commissioners of his Majesty's Customs in *England*, or any four or more of them, or of the Commissioners of his Majesty's Customs in *Scotland*, or any three or more of them; which Order the said Commissioners respectively are hereby authorised and empowered to grant, if it shall be made appear to the Satisfaction of the said Commissioners respectively upon Oath, that such Ship or Vessel was stranded by the Act of Providence, and not with a fraudulent Intent, and was, at the Time of being so stranded, the sole Property of some Foreigner or Foreigners; or that such Ship or Vessel was a *Droit of Admiralty*; and it be in like Manner fully and clearly ascertained, to the Satisfaction of such Commissioners respectively, that the said Ship or Vessel, from the Damage received by being so stranded, was rendered unfit to proceed to Sea without undergoing a thorough Repair in this Kingdom, and that she was necessarily sold for the Benefit of the foreign Owner or Owners, or being a *Droit of Admiralty*, was sold by virtue and under the Authority of an Order

or Commission from the Court of Admiralty, and that she was fairly and openly purchased by a *British Subject* or Subjects, and, being the sole and entire Property of such *British Subject* or Subjects, that she hath been so much repaired, that two-thirds of her at the least are of *British* Build.

No. 16.
25 Geo. III. c. 60

II. And be it further enacted by the Authority aforesaid, That, from and after the first Day of *August*, One Thousand Seven Hundred and Eighty-six, no Ship or Vessel shall be deemed or taken to be *British-built*, or enjoy the Privileges thereunto belonging, which shall from thenceforth be rebuilt or repaired in any foreign Port or Place, if such Repairs shall exceed the Sum of Fifteen Shillings for every Ton of the said Ship or Vessel according to the Admeasurement thereof, unless such Repairs shall be necessary by reason of extraordinary Damage sustained by such Ship or Vessel during the Absence of such Ship or Vessel from his Majesty's Dominions, to enable her to perform the Voyage in which she shall be then engaged, and to return in Safety to some Port or Place of the said Dominions; and that before such Ship or Vessel shall be repaired, so as to exceed the Sum aforesaid, the Master, or other Person having or taking the Charge or Command of such Ship or Vessel, shall report the State and Condition thereof upon Oath, or (being a Quaker) upon Affirmation, to the *British Consul*, or other Chief *British Officer*, if there shall be such Consul or Officer at the Port where it shall be necessary to repair such Ship or Vessel, and shall cause such Ship or Vessel to be surveyed by two fit and proper persons to be approved by such Consul or Chief *British Officer*; and shall deliver to such Consul or Chief *British Officer*, in Writing, the Particulars of the Damage sustained by such Ship or Vessel, and shall verify upon Oath, or (being a Quaker) upon Affirmation (to be administered by such Consul or Chief *British Officer*;) the Particulars and Amount of the Repairs of such Ship or Vessel; and that the same were become necessary in consequence of Damage sustained during the Voyage to that Port, to enable such Ship or Vessel to prosecute the Voyage then intended, and to return to some Port or Place of his Majesty's Dominions, which the said Consul, or Chief *British Officer*, is hereby required to certify under his Hand and Seal; and if there shall not be any *British Consul*, or Chief *British Officer*, resident at or near the Port or Place where such Repairs may be necessary, then that such Survey shall be made by two fit and proper Persons, to be approved of by two known *British Merchants* residing at or near such Port or Place; and that such Master, or other Person having or taking the Charge or Command of such Ship or Vessel, shall produce to such Merchants, as aforesaid, Vouchers of the Particulars and Amount of the Repairs of such Ship or Vessel, whose Certificate of the same shall be of the like Force and Effect as that of the *British Consul*, or Chief *British Officer* resident in any foreign Port or Place; and in case any Ship or Vessel shall, after the said first Day of *August* One Thousand Seven Hundred and Eighty-six, be repaired in any foreign Port or Place, the Master, or other Person having or taking the Charge or Command thereof, shall make Proof on Oath, or (if a Quaker) by Affirmation, before the Collector and Comptroller, or other principal Officer of the Customs in the Port of his Majesty's Dominions where the said Ship or Vessel may first arrive (if required by them so to do; which Oath or Affirmation the said Collector and Comptroller, or other principal Officer, or either of them, is and are hereby authorised and empowered to administer,) describing the Nature and Amount of the Charge or Expence of such Repairs; and if such Charge or Expence shall appear to exceed the before mentioned Sum of Fifteen Shillings for every Ton of the Admeasurement of such Ship or Vessel, and the said Master, or other

No Ship rebuilt, or where Repairs exceed 15s. per Ton, in a foreign Port, to be deemed *British-built*.

Exception in favour of extraordinary Damages sustained on Voyages.

Expences of Repairs to be certified, on Arrival, to an Officer of the Customs.

No. 16. Person having or taking the Charge or Command of such Ship or Vessel, shall neglect or refuse to deliver to such Collector and Comptroller, or principal Officer of the Customs, or to one of them, the Certificate so required to be produced in such Cases as aforesaid, the said Ship or Vessel shall be deemed and taken to be a foreign-built Ship or Vessel, to all Intents and Purposes whatsoever

Provisions of Act
7 & 8 Geo. 3 c. 22,
to be extended to
Vessels of fifteen
Tons and upwards,
and Certificates of
Registry obtained.

III. And whereas it is highly expedient that the Provisions made for the Registry of Ships and Vessels by an Act, made and passed in the seventh and eighth Years of the Reign of his late Majesty King WILLIAM the Third, intituled, *An Act for preventing Frauds, and regulating Abuses in the Plantation Trade*, should be altered and amended, and that the same should be extended and applied to Ships and Vessels other than those which are therein particularly described; be it therefore enacted, That all and every (1) Ship or Vessel, having a Deck, or being of the Burthen of fifteen Tons, or upwards, belonging to any of his Majesty's Subjects in Great Britain, or Guernsey, Jersey, and the Isle of Man, or any of the aforesaid Colonies, Plantations, Islands, Territories, shall, from and after the respective Times herein after expressed, be registered in Manner herein after mentioned; and that the Person or Persons claiming Property therein shall cause the same to be registered, and shall obtain a Certificate of such Registry from the Collector and Comptroller of his Majesty's Customs in Great Britain, or the Isle of Man, or from the Governor, Lieutenant Governor, or Commander in Chief, and Principal Officer or Officers of his Majesty's Revenue of Customs, residing in the Islands of Guernsey or Jersey, or in any of the said Colonies, Plantations, Islands, or Territories, respectively, in Manner herein after directed; and that the Form of such Certificate shall be as follows; *videlicet* :

IN pursuance of an Act, passed in the twenty-sixth Year of the Reign of King GEORGE the Third, intituled, *An Act [here insert the Title of the Act, the Names, Occupation, and Residence of the Subscribing Owners]*, having taken and subscribed the Oath required by this Act, and having sworn that he [or they], together with [Names, Occupation, and Residence, of non-subscribing Owners], is [or are] sole Owner [or Owners] of the Ship or Vessel called *The [Ship's Name]*, of [Place to which the Vessel belongs], whereof [Master's Name] is at present Master, and that the said Ship or Vessel was [when and where built, or captured, and Date of Condemnation]; and [Name and Employment of the Surveying Officer] having certified to us that the said Ship or Vessel is [whether British, Foreign, or British Plantation built], has [Number of Decks] Decks, and [Number of Masts] Masts; that her Length, from the Fore Part of the Main Stem to the After Part of the Stern Post aloft, is [Number of Feet and Inches], her Breadth at the broadest Part, whether above or below the Main Wales [Number of Feet and Inches], her Height between Decks [Number of Feet and Inches, if more than one Deck, and if not, then the Depth of the Hold [Number of Feet and Inches], and all-measures [Burthen] Tons, that she is a [Kind of Vessel, and how built], has [whether any, or no Gallery] Gallery, and [Kind of Head, if any] Head; and the said subscribing Owners have consented and agreed to the above Description and Admeasurement, and having brought sufficient Security to be given, as is required by

(1) In *Long v. Duff*, 2 D. & P. 209, it was held, that foreign Ships British owned, are not required to be registered.

"the said Act, the said [*Kind and Name of the Vessel*] has been duly registered at the Port of [*Name of the Port*]."

No. 16.

26 Geo. III. c. 60.

"Given under our Hands and Seals of Office, at the Custom-house, in the said Port of [*Name of the Port*] this [*Date*] Day of [*Name of the Month*], in the Year [*Words at Length*]."

IV. And be it further enacted by the Authority aforesaid, That no such Registry shall hereafter be made, or Certificate thereof granted, by any Person or Persons herein before authorised to make such Registry, and grant such Certificate, in any other Port or Place than the Port or Place to which such Ship or Vessel shall properly belong, except so far as relates to such Ships or Vessels as shall be condemned as Prizes in any of the Islands of *Guernsey, Jersey, or Man*, which Ships or Vessels shall in future be registered in Manner herein after directed; but that all and every Registry and Certificate granted in any Port or Place to which any such Ship or Vessel does not properly belong, shall be utterly null and void, to all Intents and Purposes, unless the Officers aforesaid shall be specially authorised and empowered to make such Registry, and grant such Certificate, in any other Port, by an Order in Writing under the Hands of any four or more of the Commissioners of his Majesty's Customs in *England*, or of any three or more of the Commissioners of his Majesty's Customs in *Scotland*, for the Time being, which Order the said Commissioners are hereby respectively authorised and empowered to issue, in Manner aforesaid, if they shall see fit.

No Registry made, &c. at a Port to which a Vessel belongs, except for Prizes condemned at *Guernsey* &c. unless authorised by the Commissioners of the Customs.

V. And be it further enacted by the Authority aforesaid, That the Port to which any Ship or Vessel shall hereafter be deemed and taken to belong, within the Intent and Meaning of this Act, shall be, and is hereby declared to be, the Port from and to which such Ship or Vessel shall usually trade, or (being a new Ship) shall intend so to trade, and at or near which the Husband, or acting and managing Owner or Owners of such Ship or Vessel usually resides or reside.

The Port from and to which a Ship usually trades, to be deemed her Port.

VI. [No Registry to be required for any Vessels belonging to the Royal Family.]

VII. [No Ship built in the United States of America, &c. during the Existence of any Prohibitory Acts, intitled to be registered.]

VIII. And be it enacted by the Authority aforesaid, That no Subject of his Majesty, his Heirs and Successors, whose usual Residence is in any Country not under the Dominion of his Majesty, his Heirs and Successors, shall be deemed or intituled, during the Time he shall continue so to reside, to be the Owner in Whole or in Part of any *British* Ship or Vessel, required and authorised to be registered by virtue of this Act, unless he be a Member of some *British* Factory, or Agent for, or Partner in, any House or Copartnership, actually carrying on Trade in *Great Britain* or *Ireland*.

No Subject residing out of his Majesty's Dominions, to be intituled to be the Owner of any Ship authorised to be registered except a Member of a Factory, &c.

IX. [Oath required by the recited Act of *Ge. 3.* repealed.]

X. And be it also enacted by the Authority aforesaid, That no Registry shall henceforth be made, or Certificate granted, until the following Oath be taken and subscribed before the Person or Persons herein before authorised to make such Registry, and grant such Certificate respectively (which they are hereby respectively empowered to administer,) by the Owner of such Ship or Vessel, if such Ship or Vessel is owned by, or belongs to one Person only; or in case there shall be two joint Owners, then by both of such joint Owners, if both shall be resident within twenty Miles of the Port or Place where such Register is required, or by one of such Owners, if one or both of them shall be resident at a greater Distance from such Port or Place; or if the Number of such Owners or Proprietors shall exceed two, then

No Registry to be made, &c. till the following Oath be taken.

No. 16.
20 Geo. III. c. 60

by the greater Part of the Number of such Owners or Proprietors, if the greater Number of them shall be resident within twenty Miles of such Port or Place as aforesaid, not in any Case exceeding three of such Owners or Proprietors, or by one of such Owners, if all shall be resident at a greater Distance.

"I A. B. of [Place of Residence and Occupation] do make Oath, That the Ship or Vessel [Name] of [Port or Place] whereof [Master's Name] is at present Master, being [Kind of Built, Burthen, etcetera], as described in the Certificate of the surveying Officer was [when and where built, or if Prize, Capture, and Condemnation] and that I the said A. B. [and the other Owners Names and Occupations, if any, and where they respectively reside, videlicet, Town, Place or Parish, and County, or if Member of, and resident in any Factory in foreign Parts, or in any foreign Town or City, being an agent for, or Partner in any House, or Copartnership actually carrying on Trade in Great Britain or Ireland, the Name of such Factory, foreign Town or City, and the Names of such House or Copartnership] am [or are] sole Owner [or Owners] of the said Vessel, and that no other Person or Persons whatever hath or have any Right, Title, Interest, Share, or Property therein or thereto; and that I the said A. B. [and the said other Owners, if any] am [or are] truly and bona fide a Subject, [or Subjects] of Great Britain; and that I the said A. B. have not [nor have any of the other Owners, to the best of my Knowledge and Belief] taken the Oath of Allegiance to any foreign State whatever [except under the Terms of some Capitulation, describing the Particulars thereof,] or that since my taking [or his or their taking] the Oath of Allegiance to [naming the foreign States respectively to which he or any of the said Owners shall have taken the same,] and prior to the passing of an Act in the twenty-sixth Year of the Reign of King GEORGE the Third, (intituled, *An Act for the further Increase and Encouragement of Shipping and Navigation,*) I have [or ha or they hath or have] become a Subject [or Subjects] of Great Britain [either by his Majesty's Letters Patent, as a Denizen or Denizens, or naturalized by Act of Parliament, as the Case may be, naming the Dates of the Letters of Denization, or the Act or Acts of Parliament for Naturalization respectively] or [as the Case may be] I have [or he or they have] become a Denizen [or Denizens] or naturalized Subject or Subjects, as the Case may be] of Great Britain, by his Majesty's Letters Patent, or by an Act of Parliament passed since the first Day of January One Thousand Seven Hundred and Eighty-six [naming the Times when such Letters of Denization have been granted respectively, or the Year or Years in which such Act or Acts of Naturalization have passed respectively,] and that no Foreigner, directly or indirectly, hath any Share or Part or Interest in the said Ship or Vessel."

Addition to be made to the Oath when the requisite Number of Members do not attend.

XI. And be it further enacted by the Authority aforesaid, That, in case the Number of joint Owners or Proprietors of any Ship or Vessel shall amount to three or more, and three of such joint Owners or Proprietors shall not personally attend to take and subscribe the Oath herein before directed to be taken and subscribed, then, and in such Case, such Owner or Owners, Proprietor or Proprietors, as shall personally attend, and take and subscribe the Oath aforesaid, shall further make Oath that the Part Owner or Part Owners of such Ship or Vessel then, absent is or are not resident within twenty Miles of such Port or Place, and hath or have not, to the best of his or their

Knowledge or Belief, wilfully absented himself or themselves, in order to avoid the taking the Oath herein before directed to be taken and subscribed, or is or are prevented by Illness from attending to take and subscribe the said Oath. No. 16
26 Geo. III. c. 60.

XII. [Ships to be examined, &c. before Certificates are granted, &c.]

XIII. And be it also enacted by the Authority aforesaid, That if such Person or Persons so appointed to examine and admeasure such Ships or Vessels as aforesaid, shall wilfully deliver to any Person or Persons authorised to make Registry and grant Certificates of Registry as aforesaid, a false Description of any of the particulars hereby required to be contained in such Certificate; or if any Person or Persons herein before authorised to make such Registry, and grant such Certificates of Registry, shall knowingly make any false Register, or grant any false Certificate, in regard to any of the Particulars required by this present Act, he or they on being convicted thereof by due Course of Law, in any of his Majesty's Courts of Record at *Westminster*, in the Court of Justiciary, or the Court of Exchequer in *Scotland*, or in any Court of Record in the said Colonies, Plantations, Islands, or Territories, or in the Royal Court in *Guernsey*, *Jersey*, or in the Superior Court of Justice in the *Isle of Man*, as the Case may be, shall respectively forfeit the Sum of one hundred Pounds, and be for ever incapable of holding or enjoying any Office or Employment under his Majesty.

Persons giving false Descriptions, or making false Registers, &c. of Ships, forfeit 100*l*.

XIV. [Method of ascertaining the Tonnage, when Vessels are afloat.]

XV. [Bond to be given not to lend Certificates, and to return them in Cases herein specified. Mediterranean Passes to be delivered up with Certificates.]

XVI. And whereas the Provisions made in and by the said recited Act, touching the Indorsement on Certificates of Registry, in case of any Alteration of the Property in any Ship or Vessel, in the same Port to which the Ship or Vessel belongs, have been found insufficient; be it therefore enacted by the Authority aforesaid, That, in every such Case, besides the Indorsement required by the said recited Act, there shall also be indorsed on the Certificate (2) of such Registry, before two Witnesses, the Town, Place, or Parish, where all and every Person or Persons to whom the Property in any Ship or Vessel, or any Part thereof, shall be so transferred, shall reside; or if such Person or Persons usually reside in any Country nor under the Dominion of his Majesty, his Heirs and Successors, but in some *British* Factory, the Name of such Factory of which such Person or Persons is or are Member or Members; or if such Person or Persons reside in any foreign Town or City, and are not Members of some *British* Factory, the Name of such foreign Town or City where such Person or Persons usually reside, and also the Names of the House or Copartnership in *Great Britain* or *Ireland*, for or with whom such Person or Persons is or are Agent or Partner, or Agents or Partners; and the Person or Persons to whom the Property of such Ship or Vessel shall be so transferred, or his or their Agent, shall also deliver a Copy of such Indorsement to the Person or Persons, authorised to make Registry,

Tenor of Indorsements on Certificates of Registry &c.

(g) This must be on a subsisting Certificate. A Certificate was granted to the Owner, which upon Sale to B, was given up and cancelled, and a new Certificate granted, but no Indorsement was made until three Years afterwards, and after B. had become Bankrupt, when it was made upon the cancelled Certificate, and dated of the Time of the Transfer. Ruled that this gave no Title to the Assignees of B. to recover against the Defendant, to whom a subsequent Transfer had been made, not accompanied by the proper Requisites.—*Moss v. Mills*, 6 E. 114.

No. 16.
26 Geo. II. c. 60.

and grant Certificates of Registry, as aforesaid, who are hereby required to cause an Entry thereof to be indorsed on the Oath or Affidavit, upon which the original Certificate of Registry of such Ship or Vessel was obtained; and shall also make a Memorandum of the same in the Book of Registers which is hereby directed and required to be kept, and shall forthwith give Notice thereof to the Commissioners of his Majesty's Customs in *England or Scotland*, under whom they respectively act.

Certificate to be recited in all Transfers of Property.

XVII. And be it further enacted by the Authority aforesaid, That when and so often as the Property in any Ship or Vessel, belonging to any of his Majesty's Subjects, shall be transferred to any other or others of his Majesty's Subjects, in whole or in Part, the Certificate of the Registry (3) of such Ship or Vessel shall be truly and accurately recited, in Words and Length, in the Bill or other Instrument of Sale thereof, and that otherwise such Bill of Sale shall be utterly null and void, to all Intents and Purposes (4)

Changes of Masters of Vessels to be indorsed on Certificates of Registry, &c.

XVIII. And be it further enacted by the Authority aforesaid, That when and so often as the Master, or other Person having or taking the Charge or Command of any Ship or Vessel, registered in Manner herein before directed, shall be changed, the Master or Owner of such Ship or Vessel shall deliver to the Person or Persons herein before authorised to make such Registry, and grant such Certificates of Registry, at the Port where such Change shall take place, the Certificate of Registry belonging to such Ship or Vessel; who shall thereupon indorse and subscribe a Memorandum of such Change, and shall forthwith give Notice of the same to the proper Officer of the Port or Place where such Ship or Vessel was last registered pursuant to this Act; who shall likewise make a Memorandum of the same in the Book of Registers which is hereby directed and required to be kept, and shall forthwith give Notice thereof to the Commissioners of his Majesty's Customs in *England and Scotland* respectively.

No Change to be made in Ships' Names, which, and their Ports, must be painted conspicuously on the Vessels.

XIX. And whereas many Frauds are committed by the frequent Change of Names given to Ships and Vessels, and the Difficulty of comparing the Entry in the Book of Registers, herein after directed to be kept by all such Person or Persons as are authorised to register Ships and Vessels, and to grant Certificates of the same, with the Registers of which they claim the Benefit, is thereby greatly increased; be it therefore enacted by the Authority aforesaid, That it shall not be lawful for any Owner or Owners of any Ship or Vessel, to give any Name to such Ship or Vessel, other than that by which she was first registered in pursuance of this Act; and that the Owner or Owners of all and every Ship or Vessel which shall be so registered, shall, within one Month from the Time of such Registry, paint, or cause to be painted, in white or yellow Letters, of a Length not less than four Inches, upon a black Ground, on some conspicuous Part of the Stern (provided there shall be sufficient Space for that Purpose, but if not, then in Letters as large as such Space will admit), the Name by which such Ship or Vessel shall have been registered pursuant to this Act, and the Port to which she belongs, in a distinct and legible Manner, and shall so keep and preserve the same; and that if such Owner or Owners, or Master, or other Person having or taking the Charge or Command of such Ship or Vessel, shall wilfully alter, erase, obliterate, or in anywise hide or conceal, or cause or procure, or

100l. Penalty on altering, &c. Names.

(3) Ruled, *Capadoc v. Codnor*, 8 B. & P. 483, that a Recital of the indorsement of the Certificate was not necessary under the Clause, but it is now required by 34 Geo. III. c. 68, §. 15.

(4) As to the general Operation of the Register Acts, with respect to the transfer of Ships, see Note to 34 Geo. III. c. 68, (post) §. 14.

permit the same to be done, unless in the Case of Square-rigged Vessels in Time of War, or shall in any written or printed Paper, or other Document, describe such Ship or Vessel by any Name, other than that by which she was first registered pursuant to this Act, or shall verbally describe, or cause or procure or permit such Ship or Vessel to be described, by any other Name to any Officer or Officers of his Majesty's Revenue, in the due Execution of his or their Duty, then, and in every such Case, such Owner or Owners, Master, or other Person having or taking the Charge or Command of such Ship or Vessel, shall forfeit the Sum of One Hundred Pounds.

No. 16.
26 Geo. III. c. 60.

XX. [Persons applying for Certificates in Great Britain, &c. to produce a particular Account of the Ships from the Builders, and make Oath to their Identity.]

XXI. [Persons making Application in the Colonies, after Jan. 1, 1786, to conform to the Particulars in the last Clause.]

XXII. [If Certificates be lost, new ones to be granted, according to Act 15 Geo. II. c. 31.]

XXIII. [Security to be given, on the receiving fresh Certificates, and Oath made as herein before directed, instead of the Oath, 15 Geo. II. c. 31.]

XXIV. [Ships, if registered, must be registered anew, or to be deemed foreign.]

XXV. [The Condemnation of Prizes, and the Particulars of the Vessels, &c. must be produced, to intitle to a Certificate of Registry.]

XXVI. [Prizes condemned in Guernsey, &c. to be registered at Southampton, &c.]

XXVII. [The Sum on Oath, for which a Prize sold in the Colonies, to be subjoined to the Certificate.]

XXVIII. [Certificate to express in what Part the Ship was built.]

XXIX. [Ships already registered to exchange their Certificates for new ones, and others now required to be registered, to apply for Certificates, &c.]

XXX. [Times allowed for obtaining such Certificates.]

XXXI. [Certificates may be granted, where, from unavoidable Necessity, Application could not be made in Time limited.]

XXXII. [Ships leaving Port without Certificates to be forfeited.]

XXXIII. [If Ships be found without the Port to which they belong, without Certificates, Bond must be given that they shall be procured: if square-rigged Vessels cannot enter the Ports to which they belong, Certificates may be obtained upon their being surveyed, &c. at the Port where they touch.]

XXXIV. And be it further enacted by the Authority aforesaid, That after the Expiration of the Notice herein before required, the Master or other Person having or taking the Charge or Command of every Ship or Vessel which shall have been registered, and shall have procured a Certificate of the Registry, according to the Directions of this Act, shall, upon Demand, produce such Certificate of Registry to the Principal Officer or Officers of every Port in his Majesty's Dominions, or to the *British* Consul, or Chief *British* Officer in any foreign Port to which such Ship or Vessel shall arrive, for the Inspection of such Officer or Officers, *British* Consul, or Chief *British* Officer, in order to satisfy him or them that she has been properly registered, under the Penalty of One Hundred Pounds.

Certificates of
Registry to be
produced at every
Port, on Penalty
of 100*l*.

XXXV. [Certificates, &c. to be numbered, and an Account of them to be transmitted to the Commissioners of Customs. Penalty for Neglect.]

XXXVI. [Copies of Certificates granted in Scotland to be annually transmitted to the Custom-house in England.]

No. 16.

25 Geo. III. c. 60

XXXVII. [Sums to be paid on first Registry of Ships built prior to May 1, 1786, in lieu of Stamp-duties, &c. Stamp-duties to continue to be paid, on Transfers of Property.]

XXXVIII. [Privy Council may order Ships to be registered, to whom they have been granted or promised in consideration of their Services, though not otherwise entitled thereto, &c.]

Suits commenced in the Colonies touching Registers granted such Ships may be stopped till his Majesty's pleasure be known.

XXXIX. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for any Governor, Lieutenant-Governor, or Commander in Chief of any of his Majesty's Colonies, Plantations, Islands, or Territories, and they are hereby respectively authorized and required, in any of the Cases aforesaid, if any Suit, Information, Libel, or other Prosecution or Proceeding of any Nature or Kind whatever, shall have been commenced, or shall hereafter be commenced, in any Court whatever, in any of the said Colonies, Plantations, Islands, or Territories respectively, touching the Force and Effect of any Register granted to any Ship or Vessel, in any of the Circumstances aforesaid, upon a Representation made to any such Governor, Lieutenant-Governor, or Commander in Chief, to cause all Proceedings thereon to be staid, if he shall see just Cause so to do, until his Majesty's Pleasure be known, and certified to him by his Majesty, by and with the Advice of his Privy Council; and such Governor, Lieutenant-Governor, or Commander in Chief, is hereby required to transmit to one of his Majesty's Principal Secretaries of State, to be laid before his Majesty in Council, an authenticated Copy of the Proceedings in every such Case, together with his Reasons for causing the same to be staid, and such Documents (properly verified, as he may judge necessary for the Information of his Majesty.

Penalty on Neglect of Duty.

XL. And be it further enacted by the Authority aforesaid, That any Person or Persons authorised and required by this Act, in respect of his or their Office or Offices, to perform any Act or Thing directed and required to be done or performed pursuant to any of the Provisions of this Act, shall wilfully neglect or refuse to do or perform the same, according to the true Intent and Meaning of this Act, every such Person or Persons so neglecting or refusing shall, on being duly convicted thereof, forfeit the Sum of Five Hundred Pounds, and for the second Offence shall forfeit, in like Manner, the Sum of Five Hundred Pounds, and shall from thenceforth be rendered incapable of serving his Majesty in any Office or Employment relative to the Revenue, or in any Civil Capacity whatever.

Persons making false Oaths guilty of corrupt Perjury; and falsifying or using false Certificates to forfeit 500l.

XLI. And be it further enacted by the Authority aforesaid, That if any Person or Persons shall falsely make Oath to any of the Matters herein before required to be so verified, such Person or Persons shall suffer the like Pains and Penalties as are incurred by Persons committing wilful and corrupt Perjury; and that if any Person or Persons shall counterfeit, erase, alter, or falsify any Certificate required or directed to be obtained by this Act, or shall knowingly or wilfully make use of any Certificate so counterfeited, erased, altered, or falsified, such Person or Persons shall, for every such Offence, forfeit the Sum of Five Hundred Pounds.

How Penalties are to be recovered and what is the Officers Share

XLII. And be it further enacted by the Authority aforesaid, That all the Penalties and Forfeitures inflicted and incurred by this Act shall and may be sued for, prosecuted, and recovered in such Courts, and be disposed of in such Manner, and by such Ways, Means, and Methods, as any Penalties or Forfeitures inflicted, or which may be incurred for any Offence committed against the Laws of Customs, may now legally be sued for, prosecuted, recovered, and disposed of; and that the Officer or Officers concerned in Seizures or Prosecutions under this Act, shall be entitled to and receive the same Share of the Produce arising from any pecuniary Fine or Penalty, for any

Offence against this Act, as any Officer or Officers is or are now by any Law or Regulation intituled to, upon Prosecutions for pecuniary Penalties. No. 16.
26 Geo. III. c. 60.

XLIII. And it is hereby declared and enacted by the Authority aforesaid, That all and every Matter contained in the said herein before recited Acts, or in any Act or Acts of Parliament heretofore passed, touching the Trade, Shipping, and Navigation of *Great Britain*, and the Colonies, Plantations, Islands, and Territories aforesaid thereunto belonging, which is not hereby expressly altered or repealed, shall remain and continue in full Force and Effect, to all Intents and Purposes whatever; and so far as the same relate to the Registry of Ships and Vessels, shall be deemed and taken to extend and apply in every Respect to all Ships and Vessels authorised and required by this Act to be registered, and to have Certificates of Registry.

All Acts relative to Trade to remain in force, except such Parts as are hereby repealed.

XLIV. And be it enacted by the Authority aforesaid, That the Ships and Vessels belonging to his Majesty's Subjects residing in the Kingdom of *Ireland*, being duly qualified and registered according to the Laws now in force, shall continue to enjoy all the Privileges and Advantages to which such Ships and Vessels were by Law intituled before the passing of this Act, until the End of four Calendar Months from the Commencement of the first Session of the Parliament of *Ireland* which shall hereafter sit during the Space of four Calendar Months, without Prorogation or Dissolution; and that from the End of aforesaid Time, every Ship or Vessel which shall, by virtue of the Authority of any Act that may be passed in the said Parliament of *Ireland*, be qualified and registered in any of the Ports of the said Kingdom of *Ireland*, under similar Regulations and Restrictions to those herein before contained, shall continue to enjoy, to all Intents and Purposes whatsoever, all the Privileges and Advantages of a *British-built Ship*, or *Foreign-built Ship*, owned by his Majesty's Subjects, as the Case may be, according to the Provisions of this Act.

Ships of Iron and Lawfully qualified & registered there, to enjoy the Privileges of British-built Ships, &c.

No. 17.

26 George III. c. 86.—An Act to explain and amend an Act, made in the seventh Year of his late Majesty's Reign, intituled, *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners*; and for giving a further Relief to the Owners of Ships.

WHEREAS, by an Act made in the seventh Year of the Reign of his late Majesty King GEORGE the Second, intituled, *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners*, it is amongst other Things enacted, That no Owner or Owners of any Ship or Vessel should be liable to answer for or make good to any Person or Persons, any Loss or Damage by reason of any Imbezzlement, secreting or making away with (by the Master or Mariners, or any of them) of any Gold, Silver, Diamonds, Jewels, precious Stones, or other Goods or Merchandize, which should be shipped on board any Ship or Vessel, or for any Act, Matter, or Thing, Damage or Forfeiture, done, occasioned, or incurred by the said Master or Mariners, or any of them, without the Privity and Knowledge of such Owner or Owners, further than the Value of the Ship or Vessel, with all her Appurtenances, and the full Amount of the Freight due, or to grow due, for and during the Voyage where- in such Embezzlement, secreting, or making away with, or other

26 Geo. III. c. 86.
Preamble.
Act 7 Geo. II.
c. 15, rectified.

No. 17.
26 Geo. III. c. 86.

Owners of Ships
not liable for any
Loss of Goods
shipped without
their Privy, fur-
ther than the Va-
lue of the Vessel
and the Freight,
after Sept. 1, 1786;

nor for any Loss
occasioned by Fire
on board:

Nor for Loss of
Gold, &c. unless
at the Time of
Shipping, Declara-
tion be made of
the Value, &c.

'Malversation of the Master or Mariners, should be made, committed, or done: And whereas all Masters and Captains, and Owners of Ships or Vessels, are by Law respectively subject or liable to answer for or make good to any Person or Persons, the full Value and Amount of any Goods or Merchandize by such Person or Persons shipped or put on board any Ship or Vessel, notwithstanding such Goods or Merchandize be lost by Robbery, Fire, or other Accident (other than by the King's Enemies, the Perils of the Seas, or the Act of God), or unless the Master or some of the Ship's Company are privy to such Robbery, in which Case alone the Responsibility of the Owners is by the said Act limited to the Value of the Ship and full Amount of the Freight: And whereas it is of the utmost Consequence and Importance to the general Welfare of this Kingdom, to promote the Increase of the Number of Ships and Vessels, and to prevent any Discouragement to Merchants and others from being interested and concerned therein, which is likely to happen from the Responsibility to which they are now exposed, notwithstanding the salutary Intention of the said Act: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the Authority of the same, That no Person or Persons, who is, are, or shall be Owner or Owners of any Ship or Vessel, shall be subject or liable to answer for or make good, to any one or more Person or Persons, any Loss or Damage by reason of any Robbery, Embezzlement, secreting, or making away with, of any Gold, Silver, Diamonds, Jewels, precious Stones, or other Goods or Merchandize, which, from and after the first Day of September, One Thousand Seven Hundred and Eighty-six, shall be shipped, taken in, or put on board any Ship or Vessel, or for any Act, Matter, or Thing, Damage or Forfeiture, done, occasioned, or incurred, from and after the passing of this Act, without the Privy and Knowledge of such Owner or Owners, further than the Value of the Ship or Vessel, with all her Appurtenances, and the full Amount of the Freight due, or to grow due, for and during the Voyage wherein such Robbery, Embezzlement, secreting or making away with, as aforesaid, shall be made, committed, or done, although the Master or Mariners shall not be in any-wise concerned in or privy to such Robbery, Embezzlement, secreting, or making away with; any Law, Usage, or Custom, to the contrary thereof in any-wise notwithstanding.

II. And be it further enacted by the Authority aforesaid, That no Owner or Owners of any Ship or Vessel shall be subject or liable to answer for or make good, to any one or more Person or Persons, any Loss or Damage which may happen to any Goods or Merchandize whatsoever, which, from and after the first Day of September, One Thousand Seven Hundred and Eighty-six, shall be shipped, taken in, or put on board any such Ship or Vessel, by Reason or Means of any Fire happening to or on board the said Ship or Vessel.

'III. And whereas Disputes may arise, whether the Owners or Masters of Ships are liable to answer or make good the Value or Amount of any Gold, Silver, Diamonds, Watches, Jewels, or precious Stones, which may be lost after the same have been put on board their Ships on Freight, without the Shippers thereof declaring at the Time the Value of such Goods; be it therefore enacted by the Authority aforesaid, That no Master, Owner or Owners, of any Ship or Vessel, shall be subject or liable to answer for, or make good, to any one or more Person or Persons, any Loss or Damage which may happen to any Gold, Silver, Diamonds, Watches, Jewels, or precious Stones, which, from and after the passing of this Act, shall be

shipped, taken in, or put on board any such Ship or Vessel, by reason or means of any Robbery, Embezzlement, making away with, or secreting thereof, unless the Owner or Shipper thereof shall, at the Time of shipping the same, insert in his Bill of Lading, or otherwise declare in Writing to the Master, Owner or Owners, of such Ship or Vessel, the true Nature, Quality, and Value of such Gold, Silver, Diamonds, Watches, Jewels, or precious Stones.

IV. And be it further enacted by the Authority aforesaid, That if several Freighters or Proprietors of any such Gold, Silver, Diamonds, Jewels, precious Stones, or other Goods or Merchandize, shall suffer any Loss or Damage by any of the Means aforesaid, in the same Voyage (Fire only excepted,) and the Value of the Ship or Vessel, with all her Appurtenances, and the Amount of the Freight due or to grow due during such Voyage, shall not be sufficient to make full Compensation to all and every of them, then such Freighters or Proprietors shall receive their Satisfaction thereout in Average, in proportion to their respective Losses or Damages: And in every such Case, it shall and may be lawful to and for such Freighters or Proprietors, or any of them on behalf of himself and all other such Freighters or Proprietors, or to and for the Owners of such Ship or Vessel, or any of them, or on behalf of himself and all the other Part Owners of such Ship or Vessel, to exhibit a Bill in any Court of Equity for a Discovery of the total Amount of such Losses or Damages, and also of the Value of such Ship or Vessel, Appurtenances, and Freight, and for an equal Distribution and Payment thereof amongst such Freighters or Proprietors, in proportion to their respective Losses or Damages, according to the Rules of Equity: Provided always, That if any such Bill shall be exhibited by or on the Behalf of the Part Owners of such Ship, the Plaintiff or Plaintiffs shall annex an Affidavit to such Bill or Bills, that he or they do not collude with any of the Defendants thereto; and shall thereby offer to pay the Value of such Ship or Vessel, Appurtenances, and Freight, as such Court shall direct; and such Court shall thereupon take such Method for ascertaining such Value as to them shall seem just, and shall direct the Payment thereof in like Manner as is now used and practised in Cases of Bills of Interpleader.

V. Provided always, and it is hereby declared and enacted, That nothing in this present Act contained shall extend, or be construed to extend, to impeach, lessen, or discharge any Remedy which any Person or Persons now hath, or shall or may hereafter have, against all, every, or any the Master and Mariners of such Ship or Vessel, for or in respect of any Embezzlement, secreting, or making away with, any Gold, Silver, Diamonds, Jewels, precious Stones, or Merchandize, shipped or loaded on board such Ship or Vessel, or on account of any Fraud, Abuse, or Malversation of and in such Master and Mariners respectively; but that it shall and may be lawful to and for every Person or Persons so injured or damaged, to pursue and take such Remedy for the same against the said Master and Mariners respectively, as he or they might have done before the making of this Act.

VI. And be it further enacted, That this Act shall be a Publick Act; and be judicially taken Notice of as such, by all Judges, Justices, and other Persons whomsoever, without the same being specially pleaded.

No. 17.
26 Geo. III. c. 86.

If Produce of Ship, &c. be insufficient to answer Losses, it is to be proportionally divided among the Losers.

Freighters and Owners of Vessel may exhibit Bills in Equity for Discovery of Amount of Losses and Value of Vessels, &c.

Act not to lessen the Remedy against Masters & Mariners for Embezzlement, &c.

Publick Act.

No. 18.

27 George III. c. 19.—An Act to enforce and render more effectual several Acts passed in the twelfth Year of the Reign of King CHARLES the Second, and other Acts made for the Increase and Encouragement of Shipping and Navigation.

IV. 'And whereas by the before-mentioned Act, passed in the twenty-sixth Year of his Majesty's Reign, it is enacted, That no Registry of any Ship or Vessel shall thenceforth be made, until the Owner or Owners of such Ship or Vessel shall have taken an Oath therein set forth in Manner therein directed, containing, among others, the Words following; "That I the said A. B. (and the said other Owners, if any) am (or are) truly and bona fide a Subject (or Subjects) of Great Britain; and that I the said A. B. have not, (nor have any of the other Owners, to the best of my Knowledge or Belief) taken an Oath of Allegiance to any foreign State whatever, except under the Terms of some Capitulations: [describing the Particulars thereof:]" Be it enacted by the Authority aforesaid, That any Oath which shall have been, or may be taken, for the sole Purpose of acquiring the Rights of a Citizen or Burgher in any foreign City or Town in Europe, to be enjoyed during the Time that the Person or Persons taking such Oath shall reside in such City or Town, and for a limited Time after such Residence shall have expired, shall not be deemed an Oath of Allegiance to a foreign State, within the true Intent and Meaning of the said Act.

No Oath taken to acquire a temporary Right, as a Citizen, during Residence in a foreign State, to be deemed an Oath of Allegiance to such State.

VII. 'And whereas no Provision is made in the said Act, passed in the said twenty-sixth Year of his present Majesty's Reign, requiring fresh Security by Bond to be given whenever the Master of a Ship or Vessel, registered in pursuance thereof, shall be changed: Be it therefore enacted by the Authority aforesaid, That when and so often as the Master, or other Person having or taking the Charge or Command of any Ship or Vessel, registered in Manner therein directed, shall be changed, the Person who shall become Master, or take the Charge or Command of such Ship or Vessel, shall give Security by Bond, to be taken in the Manner and under the Penalties and Conditions required by the said Act and this present Act; and upon such fresh Security being from Time to Time given, and the same being made to appear by Indorsement on the original Bond by the Officers in whose Custody it shall be, such original Bond, so far as it relates to the former Master, shall from thenceforth be null and void (except with respect to any Breach or Breaches of the Conditions of such Bond which may have been committed before such Indorsement).

Whenever the Master of a Vessel is changed, fresh Security to be given, &c.

XIII. 'And, for obviating all Doubts which may arise touching the Meaning and Construction of the said Act, made and passed in the twenty-sixth Year of the Reign of his present Majesty, intitled, 'An Act for the further Increase and Encouragement of Shipping and Navigation,' be it enacted and declared, That all Ships and Vessels which by the said Act are declared not to be intitled to any of the Privileges or Advantages of a British-built Ship owned by British Subjects, and all Ships and Vessels not registered according to the Directions and Regulations of the said Act, shall, although such Ships and Vessels may be owned by his Majesty's Subjects, be held and deemed, to all Intents and Purposes, as alien Ships, and shall in all Cases be liable to such and the same Penalties and Forfeitures as alien Ships, in the like Cases, are or shall by Law be liable to.

All Vessels which by 26 Geo. 3, c. 60, are declared not to be intitled to the Privileges of a British-built Ship &c. to be deemed alien Ships.

No. 19.

31 George III. c. 39.—An Act for the better Regulation and Government of Seamen employed in the Coasting Trade of this Kingdom.*

WHEREAS by an Act, made and passed in the second Year of the Reign of his late Majesty King GEORGE the Second, intituled, *An Act for the better Regulation and Government of Seamen in the Merchants Service*, certain Provisions are established for the Government of Seamen in Ships trading to Parts beyond the Seas, which have been found, by Experience, to be highly beneficial to the Trade and Navigation of this Kingdom: And whereas the Coast Trade of this Kingdom still remains under great Difficulties and inconveniences, for want of the like Regulations to be applied to, and established in the same, for the better Government thereof: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *July*, One Thousand Seven Hundred and Ninety-one, it shall not be lawful for any Master or Commander, or other Person having or taking the Charge or Command of any Ship or Vessel, trading from and to any Port or Place or Ports or Places in *Great Britain*, to carry out to Sea any Seaman or Mariner (except his Apprentice or Apprentices) from any Port or Place in *Great Britain*, to proceed on any Voyage to any other Port or Place in *Great Britain*, without having before entered into any Agreement or Agreements in Writing with such Seaman or Mariner, to be signed as well by such Master or Commander, or other Person as aforesaid, as by such Seaman or Mariner, for the Wages which such Seaman or Mariner is to have respectively, during the Voyage or Voyages, or during the Time he shall have contracted or entered himself for; which Contract or Agreement shall declare what Wages each Seaman or Mariner is to have, and when the same shall be payable, and for what Time, or for what Voyage or Voyages such Seaman or Mariner shall have contracted or entered himself, every such Agreement or Agreements to be in force at the Time of proceeding to Sea on any such Voyage; and in case any Master or Commander, or other Person having or taking the Charge or Command of any Ship or Vessel trading Coastwise as aforesaid, shall carry out to open Sea any Seaman or Mariner (except his Apprentice or Apprentices) upon any such Voyage by open Sea, without having first entered into such Agreement or Agreements signed as aforesaid, and such Agreement or Agreements then being in full force, such Master or Commander, or other Person having or taking the Charge or Command of such Ship or Vessel, shall forfeit and pay the Sum of Five Pounds for every such Seaman or Mariner which he shall so carry out to open Sea, to the Use of *Greenwich Hospital*, to be recovered upon Information, on the Oath of one or more Witness or Witnesses, before any one or more of his Majesty's Justice or Justices of the Peace of any County, Riding, Shire, or Place in *Great Britain*, where such Ship or Vessel shall depart from or come to in or during such Voyage, who are hereby authorised and required respectively to issue out his or their Warrant or Warrants to bring before him or them such Master or Commander, or other Person having or taking

31 Geo. III. c. 39.
Preamble.
2 Geo. II. c. 36,
repealed.

From July 1, 1791, no Masters of Vessels trading Coastwise, to proceed on a Voyage without entering into an Agreement with the Seamen for Wages, on Penalty of £1 for each.

* See 45 Geo. III. c. 81, post.

No. 19.
11 Geo. III. c. 39.

the Charge or Command of any such Ship or Vessel; and in case such Master or Commander, or other Person as aforesaid, shall neglect or refuse to pay such Penalty or Forfeiture as aforesaid, to grant his or their Warrant or Warrants to levy the same by Distress and Sale of the Offender's Goods, and in case no Distress can be found, to commit the Offender to the Common Gaol of the City, County, Town, or Place, there to remain until he shall pay the same.

Agreements to be
binding.

II. And be it further enacted, That every Seaman or Mariner entering himself on board any Ship or Vessel trading Coastwise as aforesaid, for any intended Voyage or Voyages, or for any Time to be stipulated in and by such Agreement or Agreements, shall, and he is hereby required and obliged to subscribe his Signature or Mark to such Agreement or Agreements respectively, at the Time of his so entering himself; which Agreement or Agreements, after the same shall be so subscribed by such Seaman or Mariner, and signed by the Master or Commander, or other Person having or taking the Charge or Command of such Ship or Vessel, shall be conclusive and binding to all Parties, for and during the Time or Times so agreed or contracted for, to all Intents and Purposes; any Law, Custom, or Usage, to the contrary in anywise notwithstanding.

Penalty on Seamen neglecting or refusing to proceed on Voyages for which they shall have engaged.

III. And be it further enacted by the Authority aforesaid, That in case any Seaman or Mariner, after he shall have entered into such Agreement or Agreements as aforesaid, shall neglect or refuse to proceed on the intended Voyage or Voyages for which he shall have entered, or upon which such Ship or Vessel shall be destined to proceed, every such Seaman or Mariner shall forfeit and pay to the Owner or Owners of such Ship or Vessel, all such Wages as shall be due to him at the Time of his so neglecting or refusing to proceed on such Voyage or Voyages; and it shall and may be lawful, upon Complaint made of the same to any of his Majesty's Justices of the Peace within their respective Jurisdictions, by the Master or Commander, Owner or Owners, or any other Person or Persons having Charge or Command of the Ship or Vessel to which such Seaman or Mariner did belong, for such Justice, and he is hereby required to issue his Warrant to apprehend such Seaman or Mariner; and in case such Seaman or Mariner shall refuse to proceed on the Voyage or Voyages agreed on, or on the Voyage or Voyages on which the Ship or Vessel shall be destined to proceed, within the Time contracted for, and shall not give a sufficient Reason for such Refusal, to the Satisfaction of such Justice, then to commit such Seaman or Mariner to the House of Correction, there to be kept to hard Labour for any Time not exceeding thirty Days, nor less than fourteen Days.

Penalty on Seamen absenting themselves, or deserting, before the Expiration of the Time for which they shall have engaged.

IV. And be it enacted by the Authority aforesaid, That in case any Seaman or Mariner, after having entered into such Agreement or Agreements as aforesaid, shall wilfully absent himself from the Ship or Vessel to which he shall belong, before the Voyage or Voyages agreed upon, or upon which such Ship or Vessel shall have proceeded, shall be completed, and the Cargo of such Ship or Vessel delivered, or before the Time for which he shall have contracted or entered shall be expired, every such Seaman and Mariner shall, for every Day he shall be so absent from his said Ship or Vessel, forfeit two Days' Pay to the Use of *Greenwich Hospital*, to be recovered, applied, and disposed of as is hereinafter directed; and in case any Seaman or Mariner, not entering into the Service of his Majesty, his Heirs or Successors, shall totally leave or quit his said Ship or Vessel before the Voyage or Voyages agreed upon, or upon which such Ship or Vessel shall have proceeded, shall be completed, and the Cargo of such Ship or Vessel delivered, or before the Expiration of the Time for which he shall have contracted or entered, or before such Seaman or Mariner

shall have a Discharge in Writing from the Master or Commander, or other Person having the Charge or Command of such Ship or Vessel, such Seaman or Mariner so leaving or quitting such Ship or Vessel shall forfeit one Months' Wages, to be recovered, applied, and disposed of as hereinafter is directed.

No 19.
31 Geo III. c. 39

V. And be it further enacted by the Authority aforesaid, That the Master or Commander, or other Person having or taking the Charge or Command of any Ship or Vessel employed in trading Coastwise as aforesaid, and contracting with any Seaman or Mariner to perform any such Voyage, shall, and he is hereby obliged and required to pay to every such Seaman or Mariner belonging to such Ship or Vessel, their Wages, if demanded, within five Days after such Ship or Vessel shall have entered at the Custom-house, or the Cargo shall be delivered, or at the Time the said Seamen or Mariners shall be discharged, which shall first happen, unless an Agreement shall have been made or entered into to the contrary, in which Case the Wages of such Seamen or Mariners shall be paid in Terms of such Agreement, after deducting, in every such Case, out of such Wages, the Penalties and Forfeitures by this Act imposed, in case any shall have been incurred, upon pain of forfeiting to each Seaman or Mariner, to whom Payment of his Wages shall not have been made according to this Act, of the Sum of twenty Shillings, to be paid to each such Seaman or Mariner, over and above the Wages that shall be due to him, to be recovered by the same Means and Methods as the Wages of Seamen or Mariners may by Law be recovered; and such Payment of Wages as aforesaid shall be good and valid in Law, notwithstanding any Action, Bill of Sale, Attachment, or Incumbrance whatsoever.

Masters to settle with the Men for their Wages, in the Manner herein directed, on Penalty of 20s.

VI. And be it further enacted, That no Seaman or Mariner, by entering into or signing such Contract or Agreement as aforesaid, shall be deprived of, or hindered from, using any Means or Methods for the Recovery of Wages against any Ship, or the Masters or Owners thereof, which he may now lawfully make use of; and that in all Cases where it shall or may be necessary that the Agreement or Agreements in Writing aforesaid should be produced in Court or elsewhere, no Obligation shall lie on any Seaman or Mariner to produce the same, but such Obligation shall lie on the Master or Commander, or other Person having the Charge or Command, or the Owner or Owners of the Ship or Vessel for which the Wages shall be demanded; and no Seaman or Mariner shall fail, in any Suit, Action, or Process for Recovery of Wages, for Want of such Agreement or Agreements being produced, but shall and may proceed therein as if no such Agreement in Writing had been made; any Law, Usage, or Custom, to the contrary notwithstanding.

Seamen not deprived of the usual Means for Recovery of Wages, and, in Case of Dispute, the Master to produce the Agreement.

VII. And be it further enacted, That the Masters or Commanders, or Owners of any such Ships or Vessels, or other Persons having the Charge or Command thereof, shall, and they hereby have full Power and are required to deduct, out of the Wages of any Seaman or Mariner incurring the Penalties and Forfeitures imposed by this Act, whenever the same shall be incurred, and to enter them in a Book or Books to be kept for that Purpose, and to make Oath, if required, to the Truth thereof; which Book or Books shall be signed by the said Master or Commander, or other Person having the Charge or Command of each such Ship or Vessel respectively, setting forth that the Penalties and Forfeitures contained in such Book or Books are the whole Penalties and Forfeitures stopped from any Seamen or Mariners by such Master or Commander, or other Person as aforesaid; and which Penalties and Forfeitures (except the Forfeitures of Wages to the Owners on any Seamen or Mariners refusing to proceed on their Voyage or Voyages) shall go to, and be applied to, the Use of

Penalties to be deducted out of the Men's Wages, and applied (except those of the Owners) to the Use of Greenwich Hospital.

No. 19. *Greenwich Hospital*, and shall be paid and accounted for by the
 31 Geo. III. c. 39. Masters, Commanders, and other Persons having the Charge or Command of such Ships or Vessels, to the Officer of any Port or Place who shall collect the Sixpence *per* Month deducted out of Seamen's Wages for the Use of the said Hospital, which Officer shall have, and hereby hath, full Power to administer an Oath to every Commander, Master, or other Person as aforesaid respectively, touching the Truth of such Penalties and Forfeitures.

Penalty on Masters not paying the Penalties in three Months after being so deducted.

VIII. And be it further enacted, That in case any Masters or Commanders, or Owners, of any such Ships or Vessels, or other Person having the Charge or Command thereof, shall deduct out of the Wages of any Seamen or Mariners any of the Penalties and Forfeitures which by this Act are directed to be deducted and applied to and for the Use of *Greenwich Hospital*, and shall not pay the Money so deducted to some Officer who shall collect the Sixpence *per* Month deducted out of Seamen's Wages for the Use of the said Hospital, in the Port or Place where such Deduction shall be made, within three Months after such Deduction, every such Person so neglecting to pay the Money so deducted, as aforesaid, shall forfeit and pay treble the Value thereof to the Use of the said Hospital; which, together with the Money deducted as aforesaid, shall and may be recovered by the same Means and Methods as any Penalties or Forfeitures for not duly paying the said Sixpence *per* Month can or may be recovered.

How Penalties are to be ascertained, where the Seamen contract for the Voyage.

IX. And be it further enacted by the Authority aforesaid, That in all Cases where the Seamen or Mariners of any Ship or Vessel trading Coastwise as aforesaid have contracted, or shall contract, for Wages by the Voyage, and not by the Month, or other stated Period of Time, the Penalties and Forfeitures to be incurred by such Seamen or Mariners under this Act, shall be ascertained in Manner following: (that is to say,) If the whole Time spent in the Voyage agreed or proceeded upon shall exceed one Lunar Month, the Forfeiture of one Month's Pay shall be accounted and deemed a Forfeiture of a Sum of Money bearing the same Proportion to the whole Wages, as a Lunar Month shall bear to the whole Time spent in the Voyage; and in like Manner the Forfeiture of two Days Pay shall be accounted and deemed a Forfeiture of a Sum of Money bearing the same Proportion to the whole Wages, as two Days shall bear to the whole Time spent in the Voyage; and if the whole Time spent in the Voyage shall not exceed one Lunar Month, the Forfeiture of one Month's Pay shall be accounted and deemed a Forfeiture of the whole Wages contracted for; and if such Time shall not exceed two Days, the Forfeiture of two Days Pay shall be accounted and deemed a Forfeiture of the whole Wages contracted for.

Agreements not liable to Stamp Duties.

This Act not to extend to Vessels under 100 Tons Burthen, nor to debar Seamen from entering into his Majesty's Service.

X. Provided always, and it is hereby enacted, That no Agreement or Agreements, to be made by virtue or under the Authority of this Act, shall be or be deemed liable to, or charged with, any Stamp Duties whatsoever: And provided also, That nothing herein contained shall extend, or be construed to extend, to any Ship or Vessel trading Coastwise as aforesaid, or to any Master or Commander, Seaman or Mariners, belonging thereto, unless such Ship or Vessel shall be of the Burthen of one hundred Tons or upwards, and shall go to open Sea: And provided also, That nothing in this Act contained shall extend, or be construed to extend, to debar any Seaman or Mariner, belonging to any such Ship or Vessel, from entering or being entered into the Service of his Majesty, his Heirs or Successors, on board any of his or their Ships or Vessels, nor shall such Seaman or Mariner, for such Entry, forfeit the Wages due to him during the Term of his Service in such Ship or Vessel, nor shall such Entry be deemed a Desertion.

* No. 20.

34 George III. c. 68.—An Act for the further Encouragement of *British* Mariners; and for other Purposes therein mentioned. [11th June, 1794.]

I. [12th Car. II. cap. 18. recited. After six Months from the Conclusion of the present War, no Goods, &c. to be imported into Great Britain, &c.] 34 Geo. III. c. 68.

II. [Nor any Goods exported from thence in British Vessels, unless the Master and Three-fourths of the Crew are British Subjects.]

III. [Nor any such Vessels registered in Great Britain, &c. to be otherwise navigated but as herein provided.]

IV. [No Goods to be carried from one Place to another in Great Britain, &c. nor any Vessel to sail in Ballast, nor to fish on the Coasts, unless wholly manned with British Subjects. Commissioners of the Customs may authorize Vessels to have Foreign Mariners to instruct British ones in Fishing.]

V. [Proportions of *British* Mariners to be so the whole Voyage, unless in case of Sickness, Death, Desertion, or of the Whole or Part of the Crew being taken Prisoners in the Voyage, and in such Case the Master, or other Person having the Charge or Command of such Ship or Vessel, shall specify the same in his Report. Act not to alter any Regulations for which special Provision has been made.]

VI. And, to prevent all Doubts respecting the various Terms made use of in the several Laws of Navigation with respect to who are to be deemed and taken to be qualified to be Masters of *British* Ships, or to be *British* Sailors, Seamen, or Mariners; be it declared and enacted, That no Person shall from henceforth be deemed and taken to be qualified to be the Master of a *British* Ship, or to be a *British* Sailor, Seaman, or Mariner, within the Intent and Meaning of this Act, or of any other Act now in force, except the natural-born Subjects of his Majesty, his Heirs and Successors, or Persons naturalized by or by virtue of any Act of Parliament, or made Denizens by Letters of Denization, or except Persons who have become his Majesty's Subjects by virtue of Conquest or Cession of some newly-acquired Country, and who shall have taken the Oath of Allegiance to his Majesty, or the Oath of Fidelity required by the Treaty or Capitulation by which such newly-acquired Country came into his Majesty's Possession, except as is hereinafter provided. Who shall be deemed *British* Seamen.

VII. [Foreign Seamen serving three Years in the Navy in Time of War, may be employed as Masters or *British* Seamen on Certificate of their Service, &c.]

VIII. Provided always, and be it enacted, That no Person who is or shall become qualified to be the Master of a *British* Ship or Vessel, or to be a *British* Sailor, Seaman, or Mariner by Birth, Naturalization, Denization, Conquest, or Service, in Manner hereinbefore mentioned, and who has taken or shall take any Oath of Allegiance to any Foreign Sovereign or State whatsoever, for any Purpose whatsoever, except under the Terms of some Capitulation upon the Conquest of any of the Dominions of his Majesty, his Heirs or Successors, by any Enemy or Enemies, and for the Purpose of obtaining the Benefit of such Capitulation only, shall be deemed and taken to be qualified to be the Master of a *British* Ship or Vessel, or a *British* Sailor, Seaman, or Mariner, within the Intent and Meaning of any of the Laws of Navigation, unless such Person shall have taken such Oath of Allegiance before he became so qualified; and any Person who shall, after having become disqualified by taking such Oath of No Person who has taken an Oath of Allegiance to any Foreign State, except in certain Cases, to be qualified to be a Master or a *British* Seaman.

Penalty on disqualified Persons acting.

No. 20.
34 Geo. III. c. 68.

Allegiance as aforesaid, take the Charge or Command of any British Ship or Vessel, as Master or Commander thereof, shall, for every such Offence, forfeit and pay the Sum of One Hundred Pounds; and every Person who shall, after having become so disqualified as aforesaid, engage to serve as a *British* Sailor, Seaman, or Mariner, on board any such Ship or Vessel, shall forfeit and pay for every such Offence the Sum of Ten Pounds; such Forfeitures respectively to be recovered upon Conviction before a Justice of the Peace, if such Offence shall be committed in *Great Britain*; and before any Member of the Supreme Court of Justice, or any Justice of the Peace, if such Offence shall be committed in the Islands of *Guernsey*, *Jersey*, or *Man*, or in any Colony, Plantation, Island, or Territory to his Majesty belonging in America.

IX. [Act not to affect any Proclamation under 13 Geo. II. c. 3.]

X. [Goods imported, &c. contrary to this Act to be forfeited with the Vessels, &c.]

By whom Goods
&c. forfeited may
be seized, and how
Forfeitures may be
sued for and how
applied.

XI And be it further enacted by the Authority aforesaid, That all and every the Goods, Wares, or Merchandize, and all Ships or Vessels forfeited by this Act, may and shall be seized by the Commander or Commanders of any of his Majesty's Ships of War, or any Commissioned, Warrant, or Petty Officer, specially appointed by him or them, or by any Officer or Officers of his Majesty's Customs; and that every Forfeiture incurred by this Act, and whereof the Recovery is not specially provided for by this Act, may and shall respectively be sued for, prosecuted, and recovered in such Courts, and by such and the like Ways, Means, and Methods, and the Produce thereof respectively disposed of and applied in such and the like Manner, and to such and the like Uses and Purposes, as any Forfeiture incurred by any Law respecting the Revenue of Customs may now be sued for, prosecuted, or recovered, disposed of, and applied, either in this Kingdom, or in the Islands of *Jersey*, *Guernsey*, *Alderney*, *Sark*, or *Man*, or in any of his Majesty's other Dominions in or out of *Europe* respectively, as the Case may happen to be.

XII. [On Production of Certificates of the Necessity of engaging Foreign Mariners, no Vessel to be detained, but the Persons authorized to make Seizures to indorse the Certificate for the Consideration of the Commissioners of Customs.]

XIII. [Notification in the Gazette to be deemed the Conclusion of the War.]

25 Geo. III. c. 60,
repealed, and

XIV. And whereas by an Act, passed in the twenty-sixth Year of his Majesty's Reign, intituled, *An Act for the further Increase and Encouragement of Shipping and Navigation*, it is, amongst other Things, enacted, that when and so often as the Property in any Ship or Vessel belonging to any of his Majesty's Subjects shall be transferred to any other or others of his Majesty's Subjects, in Whole or in Part, the Certificate of the Registry of such Ship or Vessel shall be truly and accurately recited in Words at Length, in the Bill or other Instrument of Sale thereof, and that otherwise such Bill of Sale shall be utterly null and void, to all Intents and Purposes: And whereas Doubts have arisen whether, by the said Provision, every Transfer of Property in any Ship or Vessel is required to be made by some Bill, or other Instrument in Writing, and whether Contracts or Agreements for the Transfer of such Property may not be made without any Instrument in Writing; be it enacted, That no Transfer, Contract or Agreement for Transfer, of Property in any Ship or Vessel, made, or intended to be made, after the first Day of January One Thousand Seven Hundred and Ninety-five, shall be valid or effectual for any Purpose whatsoever, either in Law or in Equity, unless such Transfer, or Contract or Agreement for

After Jan. 1, 1795,
no Transfer of Pro-
perty in any Ves-
sel to be valid,
unless made agree-
ably thereto.

Transfer, of Property in such Ship or Vessel, shall be made by Bill of Sale, or Instrument in Writing, containing such Recital as prescribed by the said recited Act. (1) ..

No. 20.

34 Geo. III. c. 68

XV. 'And whereas, by the Laws now in force, upon any Alteration of Property in any Ship or Vessel in the same Port to which such Ship or Vessel belongs, an Indorsement upon the Certi-

On Alteration of Property in Vessels in the Port to which they belong, after Jan. 1, 1790, the Indorsement to be made in a certain form, &c.

(1) Previus to the Statute 26 Geo. III. a Registry of Ships was only necessary by Stat. 7 and 8 William III. c. 22. with respect to such as were employed in the Plantation Trade, and by a Rule of the Admiralty not to issue a Mediterranean Pass to a Ship that had not a Register. See the Enquiries preparatory to the Introduction of the Act—Reeves, S. and N. p. 111, c. 6. The Statute, 26 Geo. III. and the present Act, have the Credit of being founded upon very sound Policy, and of having been attended with very beneficial Effects in the Attainment of their professed Object; but certainly, like most other Acts which render the Validity of Contracts dependant upon a Series of complicated Regulations, they have been productive of several Cases of very considerable Hardship (arising in a great Measure from the Obscurity of their Construction) as affecting the Interest of Individuals.

In *Mc Neal's Case*, Reeves S. and N. Lord Camden said, that the Statute 26 Geo. III. was an Act which, in every View of it, should be considered as a remedial Act, and that therefore the Rule of Construction in applying and explaining it should be such as would most aid in advancing the Means of Relief and the Suppression of Fraud; and should it be considered in any Light as a penal Law, he was clearly of Opinion, that every Thing arising from such a Consideration should be controuled by the other Character of it as a remedial Act. But in *Hubbard v. Johnstone*, 3 Taunt. 220, Mr. Justice Heath observed, with reference to 34 Geo. III. "that although the Statute be remedial yet it is very penal, if all its Requisites be not complied with. First, it annuls the Contract, and leaves the Purchaser to seek Relief from, perhaps, fraudulent and insolvent Vendor. In Cases of Bankruptcy or Insolvency it occasions a certain Loss. These Statutes are made for the Benefit of Trade and Commerce, and to regulate the Conduct of Merchants. If Laws of this Sort be not perfectly clear and intelligible to Persons of their Description, the Legislature, by the Use of such ambiguous Clauses, would lay a Snare for the Subject. A Construction which conveys such an Imputation ought never to be adopted. I think (he said) that the same Rule ought to obtain here as in the Construction of Clauses inflicting Pains and Penalties in the Revenue Laws—if they be ambiguously and obscurely worded, the Interpretation is ever in favour of the Subject, for this plain Reason, that the Legislature is ever at hand to explain its own Meaning, and to express more clearly what has been obscurely expressed; and, therefore, if the supposed Consequences were to follow, [alluding to Consequences suggested in Argument] which I by no Means allow, I should lean against the Forfeiture, and leave it to the Legislature to correct the Evil, if it be one." Surely this View of the Subject is more conformable to the Principles of Justice than that, which in Cases of doubt, would incline to subject to the very severe Consequences of this System of Law (be the Policy of it in favour of certain Monopolies ever so manifest) Acts and Omissions that could only be brought within its Operation by a Construction which no ordinary Prudence could anticipate:

In *Mestaer v. Gillespie*, 11 Vesey, 621, the Master of the Rolls observed, that it might be said, the Legislature, having proposed the Object, proposed the only Means by which that Object was to be secured, judging of the Propriety of enforcing that Object, and, by such Means, embracing that Object and prescribing those Means, whatever Inconvenience might result to private Individuals. The Harshness, therefore, in particular Instances, is not to be taken into Consideration, the Object not being to provide for the Interests of Parties as against each other; but at all events, to obtain that great Object of public Policy to which, it might be thought right to sacrifice individual Convenience and Justice according to ordinary Rules.

In most of the Cases upon the Act, the Policy of it is dwelled upon in the highest Strains of Commendation; with regard to which Topic of Argument it has always appeared to me, that a Court of Justice is not exactly the Place for discussing Questions of Policy with the greatest Propriety or Advantage; but that every Act, which has the Sanction of the Legislature, should equally

No. 20. 'ficate of Registry is required to be made;' be it enacted, That such
 13 Geo. III. c. 68 Indorsement shall, from and after the first Day of January One
 Thousand Seven Hundred and Ninety-five, be made in the Manner

be carried into Execution and Effect, according to its apparent Intent and the established Rules of legal Construction, without either extending or contracting its Operations upon any collateral Views of its Utility or Inconvenience.

But it is a very material Question for legislative Consideration, whether all the Objects of a public Nature, which it is thought material to provide for, may not be sufficiently attained without its being necessary as a Means for the Accomplishment of that End to require a Sacrifice of *individual Justice according to ordinary Rules*, or, in other Words, according to those great and immutable Principles, the Support of which is the main Purpose and most essential Benefit of civil Society.

I apprehend it may be taken for granted, that if all those Circumstances of Notoriety, as to the Built, Repairs, and Property of a Ship, which the Object and Purpose of this System of Law require, are sufficiently provided for, it will not be deemed of any Service to superadd, that the Provisions should be dispersed, complicated, obscure, or more inconvenient than may be conducive to the primary Object, and that in this as well as every other Subject of Legislation, as much Security should be given to Fairness and Integrity, and as much Care be taken to prevent the rendering mere Inadvertance or Unskilfulness liable to the Consequences properly attached to intentional Fraud, as may be consistent with the general Policy which the System of Regulations is intended to promote.

The most beneficial Course for this Purpose would apparently be to repeal the several Laws respecting the Built, Property, Transfer and Navigation of Ships, and to frame one general Act incorporating the several Provisions upon the Subject, and such others as may be suggested, either by official Experience or judicial Determinations, according to a systematic Arrangement, and in plain and perspicuous Language. This Purpose would be facilitated by departing from the usual Verbosity of Acts of Parliament, and enacting (according to the Plan recently adopted in several Instances upon Matters of Revenue) that the several Rules contained in the Act should in future be followed with respect to the Matters therein mentioned. These Rules might be divided into several Classes, as applicable to the different Branches of the Subject, for which Arrangement considerable Assistance might be derived from the summary of the existing Law in the Work of Mr. Reeves.

As a further Matter of Regulation it may be proper to establish, that after the principal Act of Sale has been executed by the Party interested, the subsequent Acts should be performed by public Officers, and that for this Purpose the Certificate of Registry should, at the End of each Voyage, be placed in the Hands of such Officers, so that a Title otherwise good may not be defeated by the Fraud or Obstinacy of the Vendor or Master. Perhaps it might not be ineligible to provide that there should be two Certificates, the one to be kept with the Ship as at present, and the other to be retained on Shore for the Purposes of Transfer, and that some Distinction by printing in a different coloured Ink, or otherwise, should be adopted to prevent the Substitution of the one for the other. As all Transfers of Property require some inchoate Proceedings, I think that no Inconvenience could arise from empowering Courts of Equity, within a limited Period, to enforce Contracts of Sale of Ships as well as of other Property; that it would be expedient to establish separate Regulations for the Pledge of Ships or Shares of Ships; and that it would be peculiarly beneficial to enable the Court of Admiralty, or some other proper Tribunal, to take Cognizance in a summary Manner, with Respect to the immediate Possession and Employment of Ships in Cases of disputed Title.

In proceeding to the Points which have been determined on the Operation of these Acts, exclusively of Cases which are mentioned in the Notes to the Sections to the particular Consideration of which they more immediately relate, it is proper to premise, that in *Long v. Duff*, 2 B. & P. 209, it was held, that foreign Ships, British owned, are not required to be registered.

The first Case decided upon the Construction of 26 Geo. III. c. 60, was *Rolleston v. Hibbert*, 3 T. R. 406, in which it was ruled, that an Action of Trover might be maintained against the Defendant, to whom a Ship had been transferred by absolute Bill of Sale, not made according to the Provisions of

and Form hereinafter expressed, and shall be signed by the Person or Person transferring the Property of the said Ship or Vessel, by Sale, or Contract or Agreement for Sale thereof, or by some Person legally

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the Act, but intended only as a Security, and that the Defendant had not any Lien against the Assignees of the Person giving the Bill of Sale, and who had become Bankrupt, (but nothing turned upon the Bankruptcy.) Lord Kenyon said, it was not necessary that the Property in a Ship should pass by a written Instrument, but if the Parties chose to convey by a written Instrument, they should not be permitted afterwards, to refer to any other Agreement. The Opinion so expressed was the Occasion of the Provision in the Text, that no Transfer should be valid except by Bill of Sale, as prescribed by 26 Geo. III. In *Wilson v. Harher*, 5 Taunt. 612, a Broker employed to sell a Vessel advanced Money upon her, and took an absolute Bill of Sale in proper Form, undertaking to account for the Difference if she produced more; but no Copy of the Indorsement of the Certificate of Registry was delivered to the proper Officer, and other Provisions of the Act were not complied with; and it was ruled, that the Defendant had not any Lien. Gibbs, C. J. said, "The Right of Lien does not arise out of any Contract whatever, but out of a Right to hold Property till the Party claiming the Lien has been paid for the Operation he performs." In the preceding Case of *Mestaer v. Atkins*, 5 Taunt. 381, 1 Marshall, 76, it was held, that a Broker employed to sell a Ship had a Lien on the Papers put into his Hands for the Purpose, as all the Cases on the Acts had been Cases of Transfer, where the Ship might have been registered in Performance of the Contract, but that the Defendant in the particular Case could never have sent the Ship to Sea. Heath, J. observed, that his Custody of the Papers gave him no Power over the Ship.

In *Kolleston v. Hibbert*, Buller, J. expressed an Opinion, that Transfers by Operation of Law were excepted; and it was expressly decided, in *Bloxam v. Hubbard*, 5 East. 407, that the Register Acts do not apply to the Assignment from the Commissioners to the Assignees of a Bankrupt. In *Reid v. Darby*, 10 East. 143, it was ruled, that Vice Admiralty Courts abroad had no Power to decree the Sale of a Ship found not sea worthy; but supposing there was such Power, as the Vessel was subsisting as such, and capable of being used for the Purposes of Navigation, the Forms of the Register Acts must be complied with.

In *Kolleston v. Smith*, 4 T. R. 161, the Certificate of Registry of a Prize Ship contained the Words "*as by Sentence of condemnation. dated 28th May, 1783, and made free, as by Certificate granted 28th January, 1783, appears, &c.*" The real Date of Condemnation was the 28th of May, 1782, and was so inserted in the Certificate which was with the Vessel at Sea, and in the Collectors, Comptrollers, and Secretary's Books—but in the Register General's Office, from which the Bill of Sale was filled up, it was stated to be the 28th May, 1783, and the Mistake was held not to vitiate the Sale. Lord Kenyon said, "There is one material Circumstance to attend to, namely, the Date of the Certificate of Freedom, which was in January, 1783; now by comparing that Date with the supposed Date of Condemnation in May, 1783, it is impossible that the latter could be correct, inasmuch as the Certificate of Freedom would then bear Date prior to the Condemnation." It is apparent, therefore, on the Face of the Instrument itself, that some Error must have crept into this Copy of the Certificate of the Registry, which was inserted in the Bill of Sale. Now it is impossible to conceive that the Framers of this Act intended to prevent the Sales of Ships at Sea, but the Statute requires that the Certificate of Registry shall be always on board the Ship, and that Abstracts of it should be entered at several Offices, of which the Register General's is one. And it is stated in the Case, that the Parties to this Bill of Sale applied to that Office for a Copy of the Certificate entered in the public Books there, which they inserted in the Bill of Sale, *verbatim et literatim*, as it is there entered. They could not have recourse to the original Certificate, for that was necessarily on board the Ship then at Sea; they went to that which was supposed to be the most authentic Depository of the Certificate, and I do not see what other Step they could have taken to comply with the Requisites of the Statutes—therefore we are of Opinion, that the Bill of Sale is valid notwithstanding this Mistake. But even supposing that the Parties had had an Opportunity of seeing the original Certificate, it is too much to say, that a mere clerical

No. 20. authorized for that Purpose by him, her, or them, and a Copy of such
 31 Geo. III. c. 68. Indorsement shall be delivered to the Person or Persons authorized to make Registry, and grant Certificates of Registry, otherwise such Sale,

Mistake should render it null and void. It is sufficiently ascertained, in this Bill of Sale, that this is the same Ship; the only Variance between the Copy and the Original is in the Figure 3 instead of 2, which appears, even on the Face of the Bill of Sale itself, to be necessarily a Mistake. For these Reasons, therefore, and with a laudable Inclination to support a fair and honest transaction, *ut res magis valeat quam pereat*, at the same time, not transgressing the Rules of Law, we are of Opinion, that this Bill of Sale was sufficiently valid." The marginal Abstract of the Case, which is copied into several Treatises, imports, generally, that a mere clerical Mistake will not vitiate the Bill of Sale; I have therefore thought it requisite to insert the Circumstances of the Case, and the Reasons given for the Judgment, at length. It certainly would have been, as between the Parties, a Case of extreme Hardship to have held the Transaction void; but how many of the Cases upon these Acts (necessary as they may be) are not Cases of Hardship? and, adverting to the strong, imperative Words of the 26th Geo. III. can it be with any Correctness said, that a Bill of Sale, alleging the Certificate to state Condemnation in 1783, was a true Recital of a Certificate stating a Condemnation in 1782? It would be manifest that there was some Error, but no accurate Information would be given as to the Truth of which that Error had taken the Place. In the preceding Case it was objected, that the Bill of Sale did not state the Name of the Officers signing the Certificate—but no Notice was taken of this Objection by the Court.

See several Instances of Inaccuracy which were deemed fatal in *Westerdell v. Dale*, 7 T. R. 306, (principally determined on another Point,) on Account of which the Instrument was held invalid. The Report does not particularly specify whether all or which of the Inaccuracies pointed out were deemed fatal; and it was sufficient for the Purpose of the Cause if any of them were so. I have a personal Recollection, that the Objections, principally by Lord Kenyon, were those of the Bill of Sale stating the Registry to be made upon Oath, whereas by the Certificate it appeared to have been upon Affirmation; and that Figures were used in the Recital instead of Words at length, as required by the Act, although in fact Figures were used in the same Places in the original Certificate.

In *Heath v. Hubbard*, 4 E. 110, it was ruled, that a Bill of Sale in Trust for the Underwriters on a certain Policy, without naming them, in Proportion to their respective Payments, supposing it to be void, was at most void only as to the Objects of the Trust, and so that the Execution of the Trust could not be enforced at Law, but that there was not any such Illegality affecting the Trustee himself as would prevent the Property vesting in him in the first Instance.

In *Underwood v. Miller & Fatkin*, 1 Taunt. 367, it appeared, that Miller & Fatkin were registered as sole Owners. By a subsequent Transfer, Fatkin assigned one fourth to Miller, not calling it all his Interest. In fact Fatkin never possessed more than one fourth. The Action being against the two for Salvage, it was held, that it was not necessary that the Bill of Sale should state the one fourth to be the whole of Fatkin's Interest. The Question seems to have turned upon the Form prescribed in 34 Geo. III. § 15, as noticed in the Note to that Section; but the Report is rather indistinct. In the marginal Abstract it is said, that the Omission of the Officer at the Outport to transmit a Copy of the Indorsement to London does not invalidate the Transfer. This Point was mentioned in the Argument, but no Notice is taken of it in the Judgment; and in using Mr. Taunton's Reports too much Reliance should not be placed on the marginal Abstracts. It was however held, in *Heath v. Hubbard*, 4 E. 110, that the Acts required to be done by the public Officers are only directory, and do not affect the Sale—and the Plaintiff's Title being supported upon that Ground, it was contended that the Defendant, being Tenant in common, no Action of Trover could be maintained—but it appearing that a Copy of the Bill of Sale to the Defendant had not been delivered to the proper Officer, which was an Omission of the Party himself, the Sale to him was on that Account held to be void. A subsequent Decision, in *Hubbard v. Johnstone*, 3 Taunt. 177, that the Delivery of such Copy was not

or Contract or Agreement for the Sale thereof, shall be utterly null and void, to all Intents and Purposes whatsoever; and such Person or Persons so authorised to make Registry, and grant Certificates of

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2d Geo. III. c. 68

necessary under the Circumstances, does not affect the general Principle, that the Omission of Facts required to be done by the Parties renders the Transaction void.

In *Moss v. Charnock*, 2 E. 399, a Bill of Sale was executed as a Security for a Debt; a Correspondence took place as to the Goodness of such Security, and the Compliance with the Forms of the Registry Act. On the 15th of November the Defendant consented to accept of the Assignment—on the 19th the Assignor committed an Act of Bankruptcy. The Requisites necessary for the Transfer of a Ship at Sea were complied with on the 5th of December; and it was ruled that no Title passed. On the Part of the Defendant it was contended, that as the Requisites of the Statute were complied with within a reasonable Time that would by Relation make the Title complete from the 15th of November. Lawrence, J. in delivering the Opinion of the Court said, that the proper Course of Decision would be by construing the Statute as enacting, that no Bill of Sale should have any Operation or Effect until the Requisites imposed upon the Parties were complied with, and by not allowing any Relation to hold good so as to make the Conveyance effectual from any antecedent time. Wood, Baron, in the Case of *Hubbard v. Johnstone*, in the Exchequer Chamber, 3 Taunt. 177, said, that he could not agree with this Doctrine: he thought the Property passed instantly by the Bill of Sale, and that the subsequent Acts to be done were not necessary to transfer the Property, but that the Grant was defeasible by subsequent Omissions where it was expressly provided, but not otherwise. If it were not so, he observed, that though in the Case of a Ship at Sea, the Statute gives ten Days after her return for the doing of certain Acts; yet, if an Act of Bankruptcy happened within the ten Days, and before such Acts were done, the Sale would have no Effect. The Judgment in this case was in Favor of the Transfer; but the Decision of that Question was not necessary to the Determination. Some Doubt also was expressed by the Lord Chancellor in *Mestaer v. Gillespie*, as to the Generality of the Propositions stated in *Moss v. Charnock*, and it was ruled in *Palmer v. Mosson*, 2 M. and S. 43, that it was sufficient that the subsequent Acts were done within a reasonable time. In that Case the Bill of Sale was executed by three out of four Owners on the 10th of June, a *fort facias* against one of the Parties so executing delivered to the Sheriff on the 11th, a Copy of the Memorandum indorsed on the Certificate delivered to the proper Officer on the same Day at a later Hour, the Bill of Sale executed by the other Owner and another Copy of the Memorandum left with the proper Officer on the 15th, and the Question being as to the Sale thereof being complete before the Delivery of the Writ, the Court held, that *Moss and Charnock* was rightly decided, as there was an unreasonable Delay between the 23d of November and the 5th of December, but that the Expressions used in this Case had gone further than what was necessary or warranted by the Law.

The Courts of Equity have considered themselves bound to apply the Provisions of the Registry Acts with the same Degree of Strictness as Courts of Law, and very properly say, in the adopting a different Rule, would in effect have been assuming a judicial Authority to dispense with the Mandates of the Legislature. Therefore in *Hibbert v. Rollison*, 5 Bro. c. 511, the Defendant at Law, in the above mentioned Case of *Hibbert v. Hibbert*, filed a Bill to be relieved from the Defect in the Transfer when the Bill was, upon Consideration, dismissed. In *Quinn v. Perry*, 6 Vesey 659, Ships bought with the Funds, and on the Account of the Partnership of *Chivwell and Nantes*, were registered in the separate Name of *Nantes*; *Chivwell* died, and immediately afterwards *Nantes* was made a Bankrupt; and it being insisted, that the Ships should be considered as joint Property, under the Provisions of Stat. 21 James I. respecting reputed Ownership, the Lord Chancellor held, that they must be applied as the separate Property of *Nantes*, desiring it to be understood, that he gave no Opinion whatever upon the Effect of the Act of Parliament, in Cases of Trusts implied by Law, and not arising out of an Act in which the contracting Parties joined. He observed, that it was unnecessary to say any thing upon that, farther than that great Variety of Cases the Interests of Mankind would require the Courts to consider

No. 20. Registry, are hereby required to cause an Entry thereof to be indorsed
 31 Geo. III. c. 68. on the Oath or Affidavit upon which the Original Certificate of Registry of such Ship or Vessel was obtained, and shall also make a Memo-

long before they should say those Statutes would prevent Trusts arising or implied by Operation of Law.

In *Mestaer v. Gillespie*, 11 Vesey, 621; the Question arose upon an interlocutory Motion, whether the Assignees of a Ship could have Relief in Equity against the Invalidity of the Transfer, for Want of Indorsement on the Certificate of Registry within ten Days, such Indorsement having been prevented by the Fraud of the Assignor. An Issue was directed as to the Fact, and a Compromise afterwards took place. The Principles applicable to the Subject were very fully discussed by the Lord Chancellor and the Master of the Rolls, and the Question was regarded as one of considerable Doubt and Difficulty. It is also stated, as matter of Doubt, whether the Assignment being of Ship and Freight, although void as to the Ship might not be valid as to the Freight.

In *Speltz v. Lechmere*, 13 Vesey, 588, the Lord Chancellor decreed an Account against one of two-part Owners to whom the other had assigned his Share, the Directions as to Indorsement within ten Days after the arrival of the Ship not having been complied with. The Question argued was, whether the Acts apply to a Sale by one Partner to another, (of which there does not appear any Ground for doubt upon the Face of the Acts themselves,) no Fraud being imputed. In a subsequent Case of *Barber v. Chapman*, cited 1 Maddock, 44, where there was gross Fraud, by preventing the Certificate being indorsed within the limited Time, the Master of the Rolls, with much Reluctance, and after a Year's Delay of his Judgment, in hopes that the Parties would agree to a Compromise, declared that he could not relieve; and, finally, in *Thompson v. Leech*, 1 Mad. 39; the Vice-Chancellor held that no Relief could be given in Equity, in the Case of a defective Title to a Ship through Fraud or Mistake—see also *ex parte Horston*, 1 Rose, C. C. 177. These Decisions, as already observed, certainly accord with the positive Mandates of the Laws, but the Hardships resulting from them render it highly important to consider whether the Continuance of such Hardships is necessary to the Objects of public Advantages which it was primarily intended to secure—a Subject upon which I have in the preceding Part of this Note more particularly enlarged.

The Cases hitherto adduced having related to the direct Question of Property, it remains to mention such as are collateral and individual.

No Insurance can be made or averred on behalf of Persons as Owners of a Ship, unless they are entitled according to the Provisions of the Acts; therefore, when two Partners purchased with a regular Bill of Sale, and afterwards took in two others, but no Transfer was made to their joint Account, it was ruled that the Firm had not any insurable Interest in the Freight—*Camden v. Anderson*, 5 T. R. 769.

In *Westerdell v. Dale*, 7 T. R. 306, one joint-Owner of a Ship having sold his share to another by a Bill of Sale, in which there were some inaccuracies in the Recital of the Certificate of Registry, it was held, that the Property was not divested out of him; and that he was liable for Repairs ordered by the other, who acted as sole Owner, and in whose Name the Plaintiff had made out his Invoice. In *Jackson v. Vernon*, 14 B. 114; it was ruled, that the Defendant, to whom transfer had been made according to the Act, which, upon the Face of it, was only a Security for a Debt, was not liable for Stores supplied previous to his taking Possession, and the Court expressed themselves clearly of Opinion, that a Mortgagee out of Possession was not answerable for Goods furnished for the Use of the Ship. It had been previously held in *Chauncey v. Blackburn*, (which had no Relation to the Register Acts), that the Mortgagee of a Ship could not maintain an Action for Freight previous to taking Possession, it being the Opinion of the Court that the Contract was with the Mortgagee. In *Westerdell v. Dale*, there was an Assignment to the Defendant of the entire Ship, by Way of Mortgage, subsequent to his own Assignment of a Motely, and which had the same Defects as the first Assignment, and one Point was as to his Liability as Mortgagee. The Case was decided upon the other Ground already mentioned; but Lord Kenyon intimated, that, whenever it became necessary to decide that Point, it might deserve

raudum of the same in the Book of Registry, and shall forthwith give Notice thereof to the Commissioners of his Majesty's Customs in *England and Scotland*, under whom they respectively act.

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34 Geo. III. c. 60

further Consideration. He observed, that the Mortgagee, whether in or out of Possession, was the legal Owner, and must be so considered in a Court of Law. He said that it had been argued, that there was a Difference between a Mortgage of real and personal Property, but that Distinction affords a strong Argument against the Mortgagee of a Ship, for the Interest or Transfer of the Ship is made, though, by way of Mortgage, the Mortgagee may state that he was possessed, and he had thought it right to throw out that Doubt, lest, whenever the Question shall arise again, it might be supposed that he had acquiesced in the Determination referred to.—Whatever may be the true Decision upon that Subject, I apprehend that it cannot fairly depend upon any Analogy to the Doctrine of Actions of Covenant against Assignees of real Estate, there certainly being no Right of Action by or against one Person upon a Contract entered into by or with another as founded upon Privy, and running with the Property. With respect to the Liability of Ship-owners, I think that the general Dicta upon that Subject should be referred to the common and general Case of Owners beneficially and immediately in Possession, to whom the Master or Ship's Husband is an Agent in Matters connected with their respective Functions; and the Liability does not arise from any Obligation directly attached to the Possession or Property of the Subject, but from the common Obligation of a Principal founded upon the Acts of the Agent within the Scope of his Authority; and there does not appear to be any adequate Reason for attaching the Responsibility of a Principal to a Person who is only interested by Way of Pledge. The Case of *Chauncey v. Blackburn* is a very strong, and, as I conceive, a very satisfactory Authority for the opposite Doctrine. In *ex parte Murhell*, 1 Rose, P. C. 447, Lord Eldon decided in favour of the Liability of the Mortgagee, but offered an Issue, which was declined. In *Arnett v. Castrait*, 3 Camp. N. P. 336, Lord Ellenborough ruled, that the Master of the Ship, employed by A. B. the Owner, could not maintain an Action against a subsequent Mortgagee of a Ship (under an Instrument duly registered) who had never taken Possession. His Lordship said, that there was express Privy of Contract between the Plaintiff and A. B. and the legal Ownership of the Ship thus became immaterial.

In *Young v. Brander*, 8 E. 10, it was ruled, that the Vendor of a Ship, transferred by Register Bill of Sale, was not liable for Repairs ordered by a Master appointed by a Vendee, previous to the Delivery of a Copy of the Bill of Sale to the proper Officers. Per Lord Ellenborough, "It is true that the Requisites of the Act have not been complied with, and that the Owners of a Ship are liable for Repairs ordered for them or for their Benefit by their Master; but it was never heard of, that, if a Stranger ordered Repairs for another's Ship, the Owner was liable. Here the Repairs were ordered by the Vendee who was a mere Stranger to the Defendant in Point of Law. In *Westerdell v. Dale* there was a Partnership. W. who had ordered the Repairs was the same as D. and the Case turned on the Privy between the two." In *Fraser v. Marsh*, 13 E. 238, it was ruled, that the registered Owner was not liable for Stores supplied to the Master to whom he had chartered the Vessel, and *per curiam*. The Register Acts were passed *inter alia*, and as the Parties did not stand in the Relation of Owner and Master, the Captain was not the Defendant's Servant, and therefore the latter is not liable for his acts. And in *M'Ferr v. Humble*, 16 E. 169, the Court held, that no Action could be sustained against the Defendant, who had made a defective Transfer of his Interest for Goods afterwards supplied to the Ship on the Credit of other Persons, although his Name appeared in the Register as Owner, and he had, subsequently to the Supply, joined in a Transfer of the Ship. *Le Blanc J.* "It is much to be lamented that the Register Acts, which were passed for other and public Purposes, should ever have operated upon the Rights of Individuals in other respects." Bayley, J. "It is said that we must look for the Purpose to the Registers, to see who are the legal Owners. The Object of the Registry Acts was to inform Government whether the Owners were British, and not to inform the Trademen to whom they should give credit. The Cases of *Young and Brander*, and *Fraser and Marsh*, both show, that a Person may be

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26 Geo. III. c. 68

Form of Indorsement on Change of Property.

"**B**E it remembered, That [I or we] [Names, Residences, and Occupation of the Persons selling] have this Day sold and transferred all (2) [my or our] Right, Share, or Interest in and to the Ship or Vessel [Name of the Ship or Vessel] mentioned in the within Certificate of Registry, unto [Names, Residence, and Occupation of the Purchasers]. Witness [my or our Hand or Hands] this [Date in Words, at full Length.]
Signed in the Presence of
[Two Witnesses]."

If Vessels be absent from the Port to which they belong, when Alteration in the Property shall be made, the Sale shall still be made as before directed, &c.

XVI. Provided always, That if any Ship or Vessel shall be at Sea, or absent from the Port to which the belongs, at the Time when such (3) Alteration in the Property thereof shall be made as aforesaid,

deceived as to the true Owner by merely looking at the Registers, and that, therefore, before Credit is given, it is proper for the Tradersmen to enquire further.—These latter Cases seem to go a great way in overruling the Decision in *Westerdell v. Dale*; for it will be very difficult to support that Case upon the mere Distinction of a Partnership as suggested by Lord Ellenborough in *Young and Brander*, it being wholly foreign to the Intention of the Parties that there should be any actual Partnership at the Time of the Supply, and the Question agitated was as to the general Liability of the Defendant, and not as supposed in *Young and Brander* on the want of a Plea in Abatement of the joint Liability of the other Party, who was supposed and intended to be sole Owner at the Time of the Contract with the Plaintiff.

According to the peculiar Nature of this Species of Property, I think it would be very desirable to make an express Provision for a distinct Mode of Registry in case of Transfer by way of Security, and for defining the Interests, Powers, and Obligations of the Mortgagees. The Policy of the Navigation Acts would probably require the Mortgagee to have the same Qualifications as are necessary in the Case of an Owner, with the Exception of general Trusts for the Benefit of Creditors or Underwriters.

In *Fraser v. Hopkins*, 2 Taunt. 5—*Tinkler v. Walpole*, 14 E. 226, it was ruled, that the Entry in the Registers is not even sufficient *prima facie* Evidence to charge a Party as Owner, unless shown to be made by his Authority. It is not sufficient Evidence of Ownership to support an Averment of Interest on a Policy of Insurance, *Price v. Anderson*, 4 Taunt. 659.

Although a Bill of Sale by way of Mortgage is valid, so far as regards the Property of the Ship, for want of Compliance with the Register; it is valid as to the personal Covenants for Payment of the Money lent—*Kerrison v. Cole*, 3 E. 231.

It was by accident omitted to insert a Note upon Sec. 8, 26 Geo. III. c. 60, of the Case of the *Eleanor*, 1 Edw. Adm. Rep. 135, in which it was held by Sir Wm. Scott, that no Person is entitled to the exclusive Benefit who has not his usual Residence in Great Britain, or in the Dominions belonging to the Crown. If he goes into another Country, and there has a more usual Residence than in this, he is no longer entitled to the same Privilege. A Person who is continually shifting his Residence, so as not to have what under any Extension can be deemed an usual Residence here, does not come within the Description of the Statute. He must be unless in the Cases which are specified, usually resident in this Country.

(2) As to the Sale of a partial Interest, see *Underwood v. Miller*, 4 Taunt. 307.

(3) This Section refers to the preceding, and relates only to an Alteration in the same Port; and, therefore, in case of a Transfer of a Ship at Sea to a Person residing in another Port it is not necessary for the Ship to return to her former Port, in order to have the Memorandum indorsed on the Certificate of Registry, or for the Purchaser to send a Copy of the Bill of Sale to the former Port, or to indorse a Memorandum of the Transfer on the Certificate within ten Days after the Ship returns to England. The proper Course in such case is to obtain a Registration *de novo*, pursuant to Statute 7 and 8, W. 3, c. 25, § 31. Stated in the Exchequer Chamber, *Hubbard v. Johnstone*, 4 Taunt. 377, contrary to what had been held in another Case relating to the

so that an Indorsement or Certificate cannot be immediately made, the Sale, or Contract or Agreement for the Sale thereof, shall notwithstanding be made by a Bill of Sale or other Instrument in Writing as before directed, and a Copy of such Bill of Sale, or other Instrument in Writing, shall be delivered, and an Entry thereof shall be indorsed on the Oath or Affidavit, and a Memorandum thereof shall be made in the Book of Registers, and Notice of the same shall be given to the Commissioners of the Customs, in the Manner hereinbefore directed; and, within ten Days after such Ship or Vessel shall return to the Port to which she belongs, an Indorsement shall be made and signed by the Owner or Owners, or some Person legally authorized for that Purpose by him, her, or them, and a Copy thereof shall be delivered in Manner hereinbefore mentioned, otherwise such Bill of Sale, or Contract or Agreement for Sale thereof, shall be utterly null and void, to all Intents and Purposes whatsoever, and Entry thereof shall be indorsed, and a Memorandum thereof made, in the Manner hereinbefore directed. (4)

XVII. Provided also, and be it enacted, That in all Cases where the Owner or Owners of any Ship or Vessel shall reside in any Country not under the Dominion of his Majesty, his Heirs and Successors, or Member or Members of some *British* Factory, or Agent or Agents for, or Partner or Partners in, any House or Co-partnership actually carrying on Trade in *Great Britain* or *Ireland* at the Time when he, she, or they shall transfer such Property in any Ship or Vessel, so that an Indorsement cannot be made immediately, nor a Copy of such Bill of Sale, or other Instrument in Writing, be delivered, nor an Entry thereof indorsed on the Oath or Affidavit, nor a Memorandum thereof made in the Book of Registers, nor Notice of the same given to the Commissioners of the Customs, in the Manner before mentioned, the same may be done at any Time within six Months after such Transfer shall have been made, and that within ten Days after such Owner or Owners, or some Person legally authorized for that Purpose by him, her, or them, shall arrive in this Kingdom, if such Ship or Vessel shall then be in any Port of this Kingdom, and if not, then within ten Days after such Ship or Vessel shall so arrive, an Indorsement shall be made by the Owner or Owners, or some Person legally authorized for that Purpose by him, her, or them, and a Copy thereof shall be delivered in Manner hereinbefore mentioned, otherwise such Bill of Sale, or Contract or Agreement for Sale thereof, shall be utterly null and void, to all Intents and Purposes whatsoever, and Entry thereof shall be indorsed, and a Memorandum thereof made, in the Manner hereinbefore directed.

Regulations for Transfer of Property when Owners reside in any Country not under the Dominion of his Majesty.

XVIII. And whereas by an Act, passed in the twenty-eighth Year of the Reign of his present Majesty, intitled, *An Act more effectually to secure the Performance of Quarantine, and for amending several Laws relating to the Revenue of Customs*, certain Provisions were, amongst other Things, made to prevent the Masters of Ships or Vessels from wilfully and maliciously detaining and refusing to deliver up the Certificates of Ships Registry, to the Prejudice of the Owners of such Ships or Vessels: And whereas the

same Transaction in *Bloxam v. Hubbard*, 2 E. 407. The Case of *Hayter v. Jackson*, 3 E. 511, in which it was held that the Transfer of a Ship belonging to Sunderland to a Purchaser in London, the Ship at the Time being in the Port of London, was void for want of Compliance with the Requisites of this or the preceding Section, seems to be also overruled by the Decision in *Hubbard v. Johnstone*.

(4) The Court intimated their decided Opinion, that the 16th Section related as well to the Transfer of the entire Property as of a Share in a Ship—*Hubbard v. Johnstone*, 3 Term, 150.

28 Geo. III. c. 34

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24 Geo. III. c. 68

Mode of Proceed-
ing, when Masters
withhold Certifi-
cates of Registers.

'good Purposes intended by those Provisions have not been effected ;
'and it is therefore expedient to make further Provisions for preventing
'the Masters of Ships or Vessels from withholding Certificates of
'Registry, to the Prejudice of the Owners of such Ships or Vessels :'
Be it therefore enacted by the Authority aforesaid, That in case the
Master of any Ship or Vessel, who shall have received the Certificate
of the Registry thereof, (whether such Master shall be a Part Owner
or not,) shall wilfully detain and refuse to deliver up the same to the
proper Officers (5) empowered to make Registry and grant a Certificate
thereof, on the Owner or Owners, or the major Part of the Owners,
of such Ship or Vessel, if such Master has not any Property therein,
or on the other Owner or Owners, or the major Part of the other
Owners, of such Ship or Vessel, if such Master hath any Share or
Property therein, requiring him so to do, it may and shall be lawful
to and for the Owner or Owners, or the major Part of the Owners,
of such Ship or Vessel, the Certificate of Registry of which shall be
detained and refused to be delivered up as aforesaid, to make Complaint
on Oath against the Master of the Ship or Vessel who shall so detain
and refuse to deliver up the same, of such Detainer and Refusal, to
any Justice of the Peace residing near to the Place where such
Detainer and Refusal shall be in *Great Britain*, or to any Member of
the Supreme Court of Justice, or any Justice of the Peace in the
Islands of *Jersey*, *Guernsey*, or *Man*, or in any Colony, Plantation,
Island, or Territory to his Majesty belonging in *America* or the *West
Indies*, where such Detainer and Refusal shall be in any of the Places
last-mentioned, and on such Complaint the said Justice or other
Magistrate shall, and is hereby required, by Warrant under his Hand
and Seal, to cause such Master to be brought before him, to be
examined touching such Detainer and Refusal; and if it shall appear
to the said Justice or other Magistrate, on Examination of the Master,
or otherwise, that the said Certificate of Registry is not lost or mis-
laid, but is wilfully detained by the said Master, such Master shall be
thereof convicted, and shall forfeit and pay the Sum of One Hundred
Pounds, and on Failure of Payment thereof, he shall be committed to
the Common Goal, there to remain, without Bail or Mainprize, for
such Time as the said Justice or other Magistrate shall in his Discretion
deem proper, not being less than six Months, nor more than twelve
Months.

Penalty for with-
holding Certifi-
cates.

Justices to certify.
Detainer of Cer-
tificates, on which
Registry may be
made *de novo*.

XIX. And be it further enacted, That the said Justice or other
Magistrate shall, and he is hereby required to certify the aforesaid
Detainer, Refusal, and Conviction (6) to the Person or Persons who
granted such Certificate of Registry for such Ship or Vessel, who shall,
on the Terms and Conditions of Law being complied with, make
Registry of such Ship or Vessel *de novo*, and grant a Certificate thereof
conformably to Law, notifying on the Back of such Certificate the
Ground upon which the Ship or Vessel was so registered *de novo*.

Where Property is
transferred, no
Vessel to be regis-
tered *de novo* by
the Register, un-
less Instrument of
Sale be produced.

XX. And whereas it is expedient that the Officers empowered
to make Registry of Ships and Vessels, and to grant Certificates

(5) This Master cannot be convicted in this Penalty for refusing to deliver
the Certificate to the sole Owner for the Purpose of providing the necessary
Indorsement, *R. v. Poxley*, 15 E. 91.

(6) This is certainly a very defective Provision, making the legal Title of
the Purchaser depend upon the Conviction of the Master before a Justice of
Peace of a wilful Detention; whereas the Detention may appear to be *bona fide*
upon an Application of the former Owner objecting to the Validity of the Sale,
a Case which I have known occur in fact. The more proper course would
be to compel the Master to deliver the Certificate to the proper Officer at all
events, and for a Memorandum of the Transfer to be made by such Officer,
without Prejudice to any Dispute with respect to its Validity.

‘thereof, in case any such Ship or Vessel is required to be registered *No. 20.*
‘*de novo*, should be authorized to require the Production of every ^{34 Geo III. c. 68.}
‘Bill or other Instrument of Sale, by which the Property in any Ship
‘or Vessel is transferred;’ be it therefore enacted by the Authority
aforesaid, That when and so often as the Property in any Ship or Vessel
belonging to any of his Majesty’s Subjects shall by Sale be transferred,
in Whole or in Part, to any other or others of his Majesty’s Subjects,
and such Ship or Vessel shall be required to be registered *de novo*, it
shall and may be lawful to and for all and every the Officer and Officers
empowered to make Registry of Ships and Vessels, and to grant
Certificates thereof, to require, and he and they are hereby authorized
and directed to require, the Bill or other Instrument of Sale thereof to be
produced to him or them; (7) and in case such Bill or other Instrument
of Sale shall be so required to be produced, and the same shall not be
produced to such Officer or Officers, the said Officer or Officers shall
not make a Registry, nor grant a Certificate of Registry *de novo*, for
any such Ship or Vessel: Provided always, That it shall and may be
lawful for the Commissioners of his Majesty’s Customs in *England*,
or any four or more of them, and the Commissioners of his Majesty’s
Customs in *Scotland*, or any three or more of them respectively, if
Application shall be made to the said Commissioners of the Customs
in *England* and *Scotland* respectively, and for the Governor, Lieutenant
Governor, or Commander in Chief for the Time being, of the Islands
of *Guernsey* or *Jersey*, or of any Colony, Plantation, Island, or
Territory to his Majesty belonging, if such Application shall be made
to any of them respectively, upon due Consideration of the particular
Circumstances of the Case, to give Direction for registering such Ship
or Vessel *de novo*, and granting a Certificate of such Registry, not-
withstanding such Bill or other Instrument of Sale shall not have been
produced as aforesaid, and such Registry shall be made, and such
Certificate thereof shall be granted accordingly: Provided always, That
all the other Regulations required by the Laws in force concerning the
Registry *de novo* of Ships and Vessels be complied with.

but the Commis-
sioners of the cus-
toms, &c. may
give Directions for
the Registry.

XXI. ‘And whereas by an Act, passed in the seventh and eighth ^{7 & 8 Geo. III.}
‘Years of the Reign of his late Majesty King *William the Third*, ^{c. 52.}
‘intituled, *An Act for preventing Frauds, and regulating Abuses in*
‘*the Plantation Trade*, it is, amongst other Things, enacted, that in
‘case there be any Alteration of Property in the same Port, by the
‘Sale of one or more Shares in any Ship, after registering thereof, such
‘Sale shall always be acknowledged by Indorsement on the Certificate
‘of the Register before two Witnesses, in order to prove that the
‘entire Property in such Ship remains to some of the Subjects of
‘*England*: And whereas it is expedient to authorize and require the
‘proper Officers empowered to register Ships and Vessels, and to grant
‘Certificates thereof, to issue Registers *de novo* in any Case where
‘Part of the Property of any Ship or Vessel shall be so transferred, if the
‘Owners or Proprietors of such Ship or Vessel, who were Owners
‘thereof at the Time such Ship or Vessel was last registered, or whose
‘Property therein has not been so transferred, shall be desirous of
‘having a Certificate of Registry *de novo*, instead of the Indorsement
‘on the old Register, as now required:’ Be it therefore enacted by the
Authority aforesaid, That in case there shall be any Alteration of
Property in the same Port, by the Sale of one or more Shares in any
Ship or Vessel, after registering thereof, and the Owner or Owners,
Proprietor or Proprietors of such Ship or Vessel, who were Owners

On Alteration of
Property in Ves-
sels in the same
Port, they may be
registered *de novo*

(7) The Officers are not bound to Register upon a Transfer by the
surviving Partners without the Concurrence of the Executors of the deceased
Holloston of Liverpool, 2 M. & S. 228.

No 20.
34 Geo III. c 68

or Proprietors thereof at the Time such Ship or Vessel was last registered, or whose Property therein has not been so transferred, shall be desirous of having the Ship or Vessel registered *de novo*, it shall and may be lawful to and for the proper Officers empowered to register Ships and Vessels, and to grant Certificates thereof, and such Officers are hereby authorized and required to register every such Ship or Vessel *de novo*, provided all the Rules, Regulations, and Conditions of the before-recited Act, passed in the twenty-sixth Year of the Reign of his present Majesty, and of all other Laws in force concerning the Registry of Ships and Vessels *de novo*, be complied with.

XXII. And whereas *British Ships or Vessels*, the Property of which is in whole or in Part transferred to Persons not being Subjects of his Majesty, are not entitled to the Privileges of *British Ships and Vessels*; and to prevent Frauds in the Employment of such Ships or Vessels as *British Ships or Vessels*, contrary to the Intention of the Laws of Navigation, they are now by Law required, in certain Cases, to be registered *de novo*; for which Purpose it is necessary that such Ship or Vessel should proceed, with all due Diligence, to the Port to which she belongs, or to any other Port in which she may be legally registered, by virtue of the said Act, passed in the twenty-sixth Year of his present Majesty's Reign, in ordered to be registered *de novo*, be it enacted, That, from and after the first Day of March One Thousand Seven Hundred and Ninety-five, as often as any such Transfer of Property in any Ship or Vessel shall be made, while such Ship or Vessel is upon the Sea, on a Voyage to a Foreign Port or Ports, in case the Master of such Ship or Vessel is privy to such Transfer, or, in case he is not so privy, as soon as he shall become acquainted therewith, such Ship or Vessel shall proceed directly to the Port or Ports for which the Cargo then on board is destined, and shall sail from such Port or Ports to which the Cargo then on board is destined, to the Port of his Majesty's Dominions to which she belongs, or to any other such Port in which she may be legally registered by virtue of the said Act, and such Ship or Vessel may take on board, in the Port or Ports for which her original Cargo was destined, or in any other Port or Ports, being in the Course of her Voyage to the Port of his Majesty's Dominions in which she may be so registered *de novo*, such Cargo, and no other, as shall be destined and may be legally carried to such Port of his Majesty's Dominions, where she may be so registered *de novo*; and if such Transfer of Property shall be made while such Ship or Vessel is in any Foreign Port, and the Master of such Ship or Vessel is privy to such Transfer, or, in case he is not so privy, as soon as he shall become acquainted therewith, such Ship or Vessel, after having delivered the Cargo then on board such Ship or Vessel at the Port or Ports for which it is destined, shall sail from such Port or Ports to the Port of his Majesty's Dominions to which she belongs, or to any other such Port in which she may be legally registered by virtue of the said Act, and may take on board, at the Port or Ports for which her original Cargo was so destined, or at any other Port, being in the Course of her Voyage to the Port of his Majesty's Dominions in which she may be so registered *de novo*, such Cargo, and no other, as shall be destined, and may be legally carried to such Port of his Majesty's Dominions, where she may be so registered *de novo*; and if such Transfer of Property shall be made while such Ship or Vessel is on a Fishing Voyage, and the Master of such Ship or Vessel is privy to such Transfer, or, in case he is not so privy, as soon as he shall become acquainted therewith, such Ship or Vessel, after having finished such Fishing Voyage, without touching at any Foreign Port or Ports, except for the Purpose of Repairs or Refreshments, or for delivering any Part of the Cargo she

From March 1.
1795, on Transfer
of Property to
Persons not Sub-
jects of his Majes-
ty. Masters of
Vessels to act as
herein directed,

may have on board destined for such Foreign Port or Ports, shall sail to the Port of his Majesty's Dominions to which she belongs, or to any other such Port where she may be legally registered by virtue of the said Act, and may take on board, at the Foreign Port or Ports last described, or at any other Port or Ports, being in the Course of her Voyage to the Port of his Majesty's Dominions where she may be so registered *de novo*, (8) such Cargo; and no other, as shall be destined and may be legally carried to such Port of his Majesty's Dominions, and every such Ship or Vessel as aforesaid shall be registered *de novo* as soon as she returns to the Port of his Majesty's Dominions to which she belongs, or to any other such Port in which she may be legally registered by virtue of the said Act; on Failure whereof such Ship or Vessel shall, to all Intents and Purposes, be from thenceforth considered, and deemed and taken to be a Foreign Ship or Vessel, and shall not again be registered, and be entitled to the Privileges of a *British* Ship or Vessel, unless upon special Representation of the Circumstances of the Case to four or more of the Commissioners of his Majesty's Customs in *England*, or to three or more of the Commissioners of his Majesty's Customs in *Scotland*, or to the Governor, Lieutenant-Governor, or Commander in Chief for the Time being, of the Islands of *Guernsey* or *Jersey*, or of any Colony, Plantation, Island, or Territory to his Majesty belonging, as the Case may be, the said Commissioners, Governor, Lieutenant-Governor, or Commander in Chief shall respectively, on Consideration of the special Circumstances of the Case, think fit to order; and in such Case they are hereby authorized to order that the said Ship or Vessel shall be registered, and be thereby again entitled to the Privileges of a *British* Ship or Vessel, and such Registry shall be made, and such Certificate thereof shall be granted accordingly: Provided always, That all the Regulations required by the Laws in force, concerning the first Registry of Ships and Vessels, shall in every such Case be complied with: Provided nevertheless, That in no Case of the Transfer of Property, in Whole or in Part, of any Ship or Vessel, in the Manner hereinbefore mentioned, the Ship or Vessel, of which the Property is so transferred, shall be registered *de novo*, or be entitled to the Privileges of a *British* Ship or Vessel, unless such Ship or Vessel shall return to the Port of his Majesty's Dominions to which she belongs, or to such other Port in which she may be registered *de novo*, within the period of twelve Months after the Date of such Transfer of Property, if such Ship or Vessel shall not be on a Voyage to the East of the *Cape of Good Hope*, or to the West of *Cape Horn*, or within two Years, if the Ship or Vessel is on a Voyage to the East of the *Cape of Good Hope*, or to the West of *Cape Horn*, at the Time such Transfer of Property shall take Place, except by the Order of the said Commissioners, Governor, Lieutenant-Governor, or Commander in Chief respectively, upon special Representation of the Circumstances of the Case, in Manner hereinbefore authorized.

No. 20.
34 Geo. III. c. 68.

and on Failure of Compliance, the Vessels to be deemed Foreign, and not entitled to the Privileges of *British* Vessels, unless the Commissioners of the Customs, &c think fit, &c.

On Transfer of Property, Vessels to be registered *de novo* within limited Times.

(8) In *Hubbard v. Johnstone*, 3 Taunt. 177, it was ruled, that this Section destroyed the Argument, that in all Cases the Ship was bound to return to the same Port to which she belonged. See Note to Section 16 ante, and by Mansfield, C. J. The Person who procured the Act undoubtedly had it in his Contemplation, that, by the existing Laws, the Ship might in some Cases be sold at Sea, and a Registration *de novo* take place; but he has left the World to guess what those Cases are.

No. 21.

37 George III. c. 63.—An Act for granting to Foreign Ships put under His Majesty's Protection, the Privileges of Prize Ships, under certain Regulations and Restrictions; and for allowing Aliens in Foreign Colonies surrendered to His Majesty, to exercise the Occupations of Merchants or Factors. [25th May, 1797.]

No. 22.

37 George III. c. 73.—An Act for preventing the Desertion of Seamen from *British Merchant Ships* trading to His Majesty's Colonies and Plantations in the *West Indies*. [6th June, 1797.]

37 Geo. III. c. 73.

From July 1, 1797, Seamen deserting from Merchant Ships to or from the West Indies, to forfeit their Wages.

WHEREAS Seamen and Mariners, after entering into Articles to serve on board *British Merchant Ships*, during the Voyages from *Great Britain* to his Majesty's Colonies and Plantations in the *West Indies*, and back to *Great Britain*, do frequently desert from such Ships on their Arrival at or in such Colonies and Plantations, on account of the exorbitant Wages given by Masters and Commanders of other *British Merchant Ships*, by the Run or Gross, to Seamen or Mariners, when in such Colonies or Plantations, to induce them to enter on Board their Ships: And whereas such Seamen and Mariners, upon entering into Articles for such Voyages from *Great Britain*, usually receive large Sums of Money in Advance, for the Purpose of their Outfit; and Monthly Allowances are frequently paid to their Families, towards their Support and Maintenance, during the Absence of such Seamen and Mariners: And whereas such Desertions have been the Means of depriving many Merchant Ships of a sufficient Number of Seamen and Mariners to navigate them back to *Great Britain*, and thereby occasioned great Losses to the Merchant's trading to the said Colonies and Plantations: For Remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of July One Thousand Seven Hundred and Ninety-seven, all and every Seaman, Mariner, and other Person who shall desert, at any Time during the Voyage, either out of home, from any *British Merchant Ship* trading to or from the said Colonies or Plantations, shall, over and above all Punishments, Penalties, and Forfeitures, to which he is now by Law subject, forfeit all the Wages he may have agreed for with, or be entitled to during the Voyage, from the Master or Owner of the Ship on Board of which he shall enter, immediately after such Desertion.

Masters hiring Seamen who have deserted from any other Ship, to forfeit 100l.

II. And be it further enacted, That all and every Master or Commander of any *British Merchant Ship* who shall, from and after the first Day of July One Thousand Seven Hundred and Nine-seven, hire, or engage to serve on Board his Ship or Vessel any Seaman, Mariner, or other Person who shall, to the Knowledge of such Master, have deserted from any other Ship or Vessel, shall forfeit and pay

the Sum of one hundred Pounds, to be recovered, levied, and applied, as hereinafter directed.

No. 22.

37 Geo. III c. 7.

III. And be it further enacted, That no Master or Commander of any Merchant Ship or Vessel which shall, from and after the first Day of July One Thousand Seven Hundred and Ninety-seven, sail or proceed from any Port or Place in *Great Britain*, shall hire or engage, or cause or procure to be hired or engaged, any Seaman, Mariner, or other Person, at any Port or Place within his Majesty's Colonies or Plantations in the *West Indies*, to serve on Board such Merchant Ship or Vessel at or for greater or more Wages or hire for such Service than according to the Rate of Double Monthly Wages, contracted for with the Seamen, Mariners, and other Persons, hired or engaged to serve on Board such Ship or Vessel at the Time of her then last Departure from *Great Britain*, being in the same Degree and Station in which such Seaman, Mariner, or other Person, shall be so hired or engaged at any such Port or Place as aforesaid; unless the Governor, Chief Magistrate, Collector, or Comptroller of such Port or Place in the said Colonies or Plantations shall think that greater or more Wages or Hire than Double the Monthly Wages aforesaid should or ought to be given to such Seaman, Mariner, or other Person as aforesaid, and do and shall accordingly authorize or direct the same to be given by Writing under his Hand; (1) that then and in such Case the Master or Commander of such Ship or Vessel shall and may be at Liberty to pay, and the Seaman, Mariner, or other Person on Board such Ship or Vessel to receive, such greater or higher Wages as such Governor, Chief Magistrate, Collector, or Comptroller, shall direct, as aforesaid; and that all Contracts, Bonds, Bills, Notes, and other Securities, Promises, and Undertakings, which shall be made, entered into, or given, contrary to the Intent and Meaning of this Act, shall be null and void to all Intents and Purposes; and that the Master or Commander of any such Merchant Ship or Vessel, or other Person or Persons whomsoever, who shall make, enter into, or give, or cause or procure to be made, entered into, or given, any such Contract, Bond, Bill, Note, or other Security, Promise, or Undertaking, or who shall hire or engage, or cause or procure to be hired or engaged, any Seaman, Mariner, or other Person, to enter on Board any Ship or Vessel, contrary to the Intent and Meaning of this Act, or who shall pay, or cause or procure to be paid or given, any greater or more Hire or Wages, or other Gratuity or Advantage whatsoever, to or for any Seaman, Mariner, or other Person so hired or engaged at any such Port or Place within his Majesty's Colonies or Plantations in the *West Indies* as aforesaid, than is allowed or directed by this Act, shall, for every such Offence, forfeit and pay the Sum of one hundred Pounds, to be recovered, levied, and applied, in the Manner hereinafter directed.

No Master sail
from Great Brita
after July 1. 1797
to hire Seamen
the West Indies
more than doubl
Wages unless au
thorised by th
Governor, &c.

Contracts contr
ry to this Act voi
and Persons ente
ing into them, &c
to forfeit 100l.

IV. And be it further enacted, That all and every Master and Masters of any Merchant Ship or Merchant Ships trading to his Majesty's Colonies and Plantations in the *West Indies*, shall have on Board his or their Ship or Ships at the Time of such Ship or Ships clearing out from *Great Britain*, one Apprentice, who shall be under the Age of seventeen Years, duly indentured for three Years, for every one hundred Tons Admeasurement of such Ship or Ships, and so in proportion for every one hundred Tons which such Ship or Ships shall admeasure, according to the Certificate of Registry, and the Indenture or Indentures of every such Apprentice shall be duly enrolled at the Custom House of the Port from whence any such Ship shall clear out, with the Collector or Comptroller, within one Month after the Date

Every Ship tra
ing to the We
Indies, to have a
Apprentice und
17 Years old, h
every 100 Ton
burthen, &c.

(1) A general License to the Captain "to procure Men on such Terms as he can" is void—*Rogers v. Lacy*, 3 B. & P. 57.

No. 22.
37 Geo. III. c. 73.

Apprentices exempt from serving in the Navy for three Years Penalty of 10*l.* for not enrolling them

or Execution thereof; which said Apprentice and Apprentices shall be, and is and are hereby exempt from serving in his Majesty's Navy for the Space of three Years from the Date of such Indenture or Indentures; and all and every Owner or Owners, or Master and Masters neglecting to enroll the same as aforesaid, shall, for every such Offence, forfeit and pay the Sum of ten Pounds, to be paid in Manner following; (that is to say,) one Moiety by the Owner or Owners of such Ship or Ships, and the other Moiety by the Master or Masters thereof, to be levied, recovered, and applied, in Manner hereinafter mentioned.

Masters of such Ships out and home, within ten Days after Arrival, to deliver Lists containing, certain Particulars, on Penalty of 5*l.*

V. And be it further enacted, That all and every Master and Masters of such Ship or Ships shall, within ten Days after their Arrival out at any Port or Ports in the said Colonies or Plantations, and also within ten Days after their Arrival home at any Port or Ports in *Great Britain*, deliver, upon Oath, to be made before the Collector or Comptroller of such Port or Ports respectively, (who is hereby authorized to administer the same,) a true and exact List and Description of all and every the Crew on Board such Ship or Ships at the Time of their clearing out from any Port or Ports in *Great Britain*, and also of the Crew on Board the same at the Time of their Arrival in any Port or Ports in the said Colonies or Plantations, and also a true and exact List and Description of all and every Seaman, Mariner, or other Person who has or have deserted from such Ship or Ships, or who has or have died during the Voyage; and also a true Account of the Wages due to each Seaman, Mariner, or other Person so dying, at the Time of his Death; and all and every Master and Masters omitting, neglecting, or refusing so to do, shall, for every such Offence, forfeit the Sum of fifty Pounds; and for which said List and Account so delivered, such Collector or Comptroller shall be entitled to demand and receive, from the Person so delivering the same, the Fee of two Shillings and Sixpence, and no more; and it shall and may be lawful to and for all and every Master and Masters of any Ship or Ships, or other Person or Persons, to inspect such List or Lists, from Time to Time, as he or they may think proper; for which Inspection the said Collector or Comptroller shall be entitled to demand and receive from the Person making the same, the Sum of one Shilling, and no more.

Collector, &c. entitled to 5*l.* on Delivery of Lists, which may be inspected on Payment of 1*l.*

No Seaman entering on board any Vessel in the West Indies, which sailed from England after July 1, 1797, to be entitled to greater Wages than herein authorized.

VI. And be it further enacted by the Authority aforesaid, That no Seaman, Mariner, or other Person, who shall, at any Port or Place within his Majesty's Colonies or Plantations in the *West Indies*, hire or engage himself to serve, or who shall in the said Colonies or Plantations enter on Board any Merchant Ship or Vessel which shall sail from *Great Britain* after the first Day of July one thousand seven hundred and ninety-seven, shall be entitled to, nor shall he sue for, recover, receive, any greater or more Wages or Hire, or other Gratuity or Advantage whatsoever, on account of or for such his Service, than such Wages or Hire as hereinbefore authorized or directed to be paid or received.

Wages of dead Men to be paid to the Receiver of the 6*d* Duty for Greenwich Hospital, on Penalty of 5*l.* and double the Wages.

VII. And be it further enacted, That all and every Sum and Sums of Money which shall be due for Wages to any Seaman, Mariner, or other person hired or engaged on Board any *British* Merchant Ship for any Voyage from any Port or Ports in *Great Britain* to any Port or Ports in the said Colonies or Plantations, and who has or have died on Board during the Voyage, shall, within three Calendar Months after the Arrival of such Merchant Ship in any Port or Ports in *Great Britain*, be paid to the Receiver of the Sixpenny Duty for *Greenwich Hospital* for the Time being, to the Use of the Executor or Executors, Administrator or Administrators, of the Seaman, Mariner, or other Person so dying; (2) and if any Master of any such Merchant Ship

(2) The Executor may sue the Captain for any Wages due beyond the Sum paid—*Armstrong v. Smith*, 1 N. R. 299.

shall neglect or refuse to pay over, or tender to the said Receiver, all and every such Sum and Sums of Money within the Time herein-before limited, he shall forfeit and pay, for every such Offence, the Sum of fifty Pounds, and also double the Amount of the Sum or Sums of Money so due to any Seaman, Mariner, or other Person, for Wages, as aforesaid.

No. 22.
37 Geo. III. c. 73.
Disposition of such
Wages if not de-
manded of the
Receiver in three
Years.

VIII. Provided always, and be it further enacted, That all and every such Sum and Sums of Money which shall not be lawfully demanded of the said Receiver within the Term of three Years after Payment thereof to him in Manner aforesaid, shall be forfeited, and shall go and be paid to the Use of the Seamen's Hospital of the Port to which such Ship belongs; but in case there shall be no Seamen's Hospital at the Port to which such Ship belongs, then to and for the Use and Benefit of the old and disabled Seamen of the same Port, and their Families, to be distributed at the Discretion of the Magistrates for the County where such Port shall be situate, or any two or more of them.

Disposition of
Penalties.

IX. And be it further enacted by the authority Aforesaid, That the Penalties and Forfeitures given by this Act shall be paid and applied in Manner following; that is to say, one third Part thereof for and towards the Support of *Greenwich Hospital*; one other third Part thereof for and towards the Support of the Seamen's Hospital at the Port to which the Ship or Vessel in respect of which the Forfeiture shall arise belongs; but in case there shall be no Seamen's Hospital at the Port to which such Ship or Vessel belongs, then to and for the Use and Benefit of the old and disabled Seamen of the same Port and their Families, to be distributed at the Discretion of the Persons having the Direction of the Merchant's Seamen's Fund at such Port, or in case there shall be no such Establishments there, by the Magistrates or Overseer of the Poor of such Port; and the other third Part thereof to and for the Person or Persons who shall inform and sue for the same; and that such Penalty shall be recovered by Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*; or such of them as do not exceed the Sum of twenty Pounds, upon Information, on the Oath of one or more Witnesses, before any one or more of his Majesty's Justice or Justices of the Peace in any Part of the Kingdom of *Great Britain*, who shall not reside more than ten Miles from the Place of Abode of the Person or Persons complained of, which Justice and Justices is and are hereby authorized and required to issue out his or their Warrant or Warrants, to bring before him or them every Person charged with any Offence under this Act; and in case he or they shall refuse or neglect to pay such Penalties or Forfeitures as aforesaid, to issue his or their Warrant or Warrants to levy the same, by Distress and Sale of the Offenders Goods, and in case no Distress can be found, to commit the Offender or Offenders to the Common Gaol of the City, Town, or Place within the Jurisdiction of such respective Justice or Justices, there to remain for the Space of three Calendar Months, or until he or they shall pay the same.

Recovery of
Penalties.

Act not to extend
to Seamen pro-
ducing Certificates
of Discharge.

X. Provided nevertheless, and be it enacted, That nothing in this Act shall extend, or be construed to extend, to any Contract or Agreement which shall or may be made with any Seaman, Mariner, or other Person hired or engaged to serve on Board any Merchant Ship or Vessel, at any Port or Place within his Majesty's Colonies or Plantations in the *West Indies*, who shall, at the Time of such Hiring or Engagement, produce and deliver to the Master and Commander of such Merchant Ship or Vessel a Certificate, under the Hand of the Master or Commander of the Ship or Vessel on Board of which such Seaman, Mariner, or other Person had then last served, signed in the

No. 22. Presence of one or more Witness or Witnesses, stating their usual Place or Places of Abode, thereby declaring or certifying that such Seaman, Mariner, or other Person, had been duly discharged from the Ship or Vessel on Board of which he had so last served; and which Certificate the said Master or Commander shall grant within three Days next after Application made to him by such Seaman, Mariner, or other Person, before a Witness, or in Default thereof, shall forfeit and pay the Sum of twenty Pounds, to be levied, recovered, and applied, in Manner hereinbefore directed; nor to any Contract or Agreement to be made with any Seaman, Mariner, or other Person hired or engaged to serve on Board any Merchant Ship or Vessel, which through Necessity, or on account of very hazardous Service or extraordinary Duty, require such Contract or Agreement to be made, and more Wages or Hire given, and of which Necessity, Service, or extraordinary Duty, Proof shall be made on Oath before the Chief Magistrate or Principal Officer of any Port or Place, or before any Justice or Justices of the Peace of the said Colonies or Plantations, and provided also that such Seaman, Mariner, or other Person so hired or engaged to serve on Board any Ship or Vessel, so requiring such Service, shall not have deserted from the Ship or Vessel on Board of which he had then last served; and provided also, that no greater or higher Wages or Hire shall be given by any Master or Commander, or taken or received by any Seaman, Mariner, or other Person as aforesaid, except in Cases of such Necessity, very hazardous Service, or extraordinary Duty, as aforesaid, than after the Rate of Double the Monthly Wages, or the Wages to be settled or directed by any Governor, Chief Magistrate, Collector, or Comptroller, as hereinbefore directed to be paid or received as aforesaid.

After July 1, 1797,
Articles to be entered into agreeable to annexed Schedule.

Publick Act.

XI. And be it further enacted by the Authority aforesaid, That, from and after the said first Day of July One Thousand Seven Hundred and Ninety-seven, the Articles to be entered into by and between the Masters, Seamen, Mariners of such Merchant Ship or Ships, shall be agreeable and to the Purport and Effect as mentioned in the Schedule hereto annexed, marked with the Letter A.

XII. And be it further enacted by the Authority aforesaid, That this Act shall be deemed and taken to be a Public Act; and all Judges and Justices are hereby required to take Notice of it as such, without specially pleading the same.

The SCHEDULE to which this Act refers.

A.

Ship.

IT is hereby agreed between the Master, Seamen, and Mariners of the Ship now bound for the Port of _____ and the Master or Commander of the said Ship, That in Consideration of the Monthly or other Wages against each respective Seaman or Mariner's Name hereunto set, they severally shall and will perform the above-mentioned Voyage; and the said Master doth hereby agree with and hire the said Seamen and Mariners for the said Voyage at such Monthly Wages, to be paid pursuant to the Laws of Great Britain; and they the said Seaman and Mariners do hereby promise and oblige themselves to do their Duty, and obey the lawful Commands of their Officers on Board the said Ship or Boats thereunto belonging, as become good and faithful Seamen and Mariners; and at all Places where the said Ship shall put in or anchor during the said Ship's Voyage, to do their best Endeavours for the Preservation of the said Ship and Cargo, and not to neglect or refuse doing their Duty by Day or Night; nor shall go out of the said Ship on Board any other Vessel, or be on Shore under any pretence whatsoever, till the Voyage

is ended and the Ship discharged of her Cargo, without Leave first obtained of the Master, Captain, or Commanding Officer on Board ; and in Default thereof they freely agree to be liable to the Penalties mentioned in the Act of Parliament made in the second Year of the Reign of King George the Second, intituled, *An Act for the better Regulation and Government of Seamen in the Merchants Service* ; and the Act, made in the thirty-seventh Year of his present Majesty's Reign, intituled, *An Act for preventing the Desertion of Seamen from British Merchant Ships trading to his Majesty's Colonies and Plantations in the West Indies* : And it is further agreed by the Parties to these Presents, that twenty-four Hours Absence without Leave shall be deemed a total Desertion, and render such Seamen and Mariners liable to the Forfeitures and Penalties contained in the Acts above recited ; that each and every lawful Command which the said Master shall think necessary to issue for the effectual Government of the said Vessel, suppressing Immorality and Vice of all Kinds, be strictly complied with under the Penalty of the Person or Persons disobeying, forfeiting his or their whole Wages or Hire, together with every Thing belonging to him or them on Board the said Vessel : And it is further agreed, That no Officer or Seaman, or Person belonging to the said Ship, shall demand or be entitled to his Wages, or any Part thereof, until the Arrival of the said Ship at the above-mentioned Port of Discharge, and her Cargo delivered, nor less than twenty Days in case the Seamen is not employed in the Delivery : And it is hereby further agreed between the Master and Officers of the said Ship, That whatever Apparel, Furniture, and Stores, each of them may receive into their Charge, belonging to the said Ship, shall be accounted for on their Return ; and in case any Thing shall be lost or damaged through their Carelessness or Insufficiency, it shall be made good by such Officer or Seaman by whose Means it may happen to the Master and Owner of the said Ship : And whereas it is customary for the Officers and Seamen on the Ship's Return home in the River ; and during the Time their Cargoes are delivering, to go on Shore each Night to sleep, greatly to the Prejudice of such Ship and Freighters ; be it further agreed by the said Parties, That neither Officer nor Seaman shall, on any Pretence whatsoever, be entitled to such Indulgence, but shall do their Duty by Day in Discharge of the Cargo, and keep such Watch by Night as the Master or Commander of the said Ship shall think necessary, in order for the Preservation of the above : And whereas it often happens that Part of the Cargo is embezzled after being delivered into Lighters, and as such Losses are made good by the Owners of the Ships ; be it therefore agreed by these Presents, That whatever Officer or Seaman the Master shall think proper to appoint, shall take Charge of the Cargo in the Lighters, and go with the same to the lawful Quay, and there deliver his Charge to the Ship's Husband, or his Representative, or see the same safely weighed at the King's Beam, and in consequence of their true Fidelity, such Officer or Seaman shall be entitled to two shillings and sixpence each Lighter, exclusive of their Monthly Pay ; and should it so happen that Lighters are detained a considerable time at the Quay before they can be unloaded, such Officer and Seaman so appointed shall in that Case be entitled to two Shillings and Sixpence for every twenty-four Hours, exclusive of their said Monthly Pay ; that each Seaman and Mariner who shall well and truly perform the above-mentioned Voyage (provided always that there be no Plunderage, Embezzlement, or other unlawful Acts committed on the said Vessel's Cargo or Stores) shall be entitled to their Wages or Hire that may become due to him, pursuant to this Agreement ; that for the due Performance of each and every the above mentioned Articles and Agreements, and Acknow-

No. 22.

37 Geo. III. c. 73.

Complaint made thereof to any of His Majesty's Justices of the Peace withip their respective Jurisdictions, by the Master or Commander, Owner or Owners, or any other Person having Charge or Command of the Ship or Vessel to which such Seaman or Mariner so belongs, for such Justice, and he is hereby required to issue his Warrant to apprehend such Seaman or Mariner; and in case such Seaman or Mariner shall not give sufficient Reason for such Refusal, to the Satisfaction of such Justice, then to commit such Seaman or Mariner to the House of Correction, there to be kept to hard Labour for any Time not exceeding Thirty Days nor less than Fourteen Days.

No. 24.

45 Geo. III. c. 81.

No. 25.

48 George III. c. 130.—An Act for preventing the various Frauds and Depredations committed on Merchants, Ship Owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth Year of the Reign of Her late Majesty Queen Anne.

19.

[30th June 1808.]

XXI. And whereas it is expedient that the like means of conclusively adjusting and recovering the Quantum of the Monies or Gratuities to be paid to the several Persons acting or being employed in the Salvage of any Ship, Vessel, or Goods, should subsist and be by Law applicable in Cases where the Salvors shall have acted under and by the mere Employment and Authority of the Commander or other Superior Officer, Mariners, or Owners of any Ship or Vessel in Distress, are now by Law provided for adjusting the Quantum of such Monies or Gratuities which shall have become due in Cases where Application shall have been first made to Officers of the Customs, or other the Officer or Officers in that Behalf named and appointed in and by a certain Statute made in the Twelfth Year of the Reign of our late Sovereign Lady Queen Anne, intituled, *An Act for preserving of all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom, or any other of Her Majesty's Dominions, and where Assistance shall have been thereupon rendered in pursuance of the Provisions of that Statute;* be it therefore enacted and declared by the Authority aforesaid, That from and after the passing of this Act, all and every the Means which in virtue of the Statute last mentioned subsist, and may now be by Law applied for the conclusively adjusting and for the recovering of the Quantum of the Monies or Gratuities to be paid to the several Persons acting or being employed in the Salvage of any Ship, Vessel, or Goods, in Cases where Application shall have been first made pursuant to that Statute to Officers of the Customs, or other the Officer or Officers therein in that Behalf mentioned, and Assistance shall have been thereupon rendered and had in pursuance of the Provisions of that Statute, shall be by Law applicable and available in like Manner, to all Intents and Purposes, in Cases where the Salvors shall have acted under and by the mere Employment and Authority of the Commander or other Superior Officers, Mariners, or Owners of any Ship or Vessel in Distress, although no such Application shall have been made to, nor any Authority or Assistance derived from any Officers of

Regulations of 12
Anne st. 2. c. 18,
as to adjusting and
recovering Quantum
of Salvage extended
to Cases of Salvage
without Interference of
Officers of the
Customs.

No. 25. the Customs, or other the Officer or Officers in the said Statute in that behalf mentioned; and that upon Payment or Tender and Refusal of the *Quantum* of Monies or Gratuities to be paid to the several Persons who shall have acted or been employed in such Salvage, or in case such Payment or Tender cannot be made, on Security being given for the due Payment thereof to the Satisfaction of the Justices who shall have adjusted such *Quantum* of Gratuities, it shall not be lawful for any Officer of the Customs, or other Person or Persons having the Possession or Custody of such Ship, Vessel, or Goods, any longer to retain the Possession or Custody of the same, or any Part thereof, by Reason or Pretence of any Claim or Right to a Compensation or Gratuity for such Salvage as aforesaid, or for having acted or been employed therein.

Quantum of Money or Gratuity to Salvors may be ascertained by Justices of Peace.

XXII. Provided always, that in Cases where the Salvors shall have acted without Application made to and without any Authority or Assistance derived from any Officer of the Customs or other Officer in the said Act mentioned, and the Commander or other Superior Officer, Mariners, or Owners of such Ship or Vessel so saved as aforesaid, or the Merchant or other Person whose Goods shall be so saved, or their Agents as aforesaid, shall disagree with such Salvors, touching the *Quantum* of the Monies or Gratuity deserved by any Persons so employed as aforesaid, it shall be lawful for the Commander of such Ship or Vessel so saved, or the Owner of the Goods, or Merchant interested therein, or their Agents, and for such Salvors as aforesaid, to nominate Three neighbouring Justices of the Peace to adjust the *Quantum* of the Monies or Gratuities to be paid to such Salvors; and in case the Parties shall not agree in such Nomination, that then on the Application of any of the Parties to any One Justice of the Peace, the Justice so applied to shall nominate Two other neighbouring Justices of the Peace; and such Three neighbouring Justices shall and may thereupon, and they are hereby authorized and required, to adjust the *Quantum* of the Monies and Gratuities to be paid to all and each of such Salvors who shall disagree with such Master, Commanding Officer, Merchant, or Owners, or their Agents as aforesaid, touching the *Quantum* of Monies, or the Gratuity to be paid to him or them respectively, for his or their having been employed and acted in such Salvage as aforesaid.

XXIII. [Saving of Jurisdiction of Cinque Ports.]

"Publick Act. § 24."

XXV. Provided always, That this Act shall continue in force for Seven Years, and from thence to the End of the then next Session of Parliament, and no longer.

No. 26.

49 George III. c. 122.—An Act for preventing Frauds and Depredations committed on Merchants, Ship Owners, and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in *England*, under an Act made in the Twelfth Year of Queen *Anne*. [20th June 1809.]

59 G. III. c. 122.

WHEREAS great Depredations have for many Years past been committed by Boatmen, Pilots, Hovellers, and others, on Ships in Distress and otherwise, and Anchors, Cables, and other Property of Ships and Vessels on the Coasts and in the Harbours, Bays, and Rivers of *England* and *Wales*, and the Town and Harbour of

* *Berwick-upon-Tweed*, are oftentimes carried away or destroyed by such Boatmen, Pilots, Hovellers, and others, or when found are not restored to the Owners thereof, and great Extortions are committed and exorbitant Demands made upon the Masters and Owners of such Ships for saving and preserving the same, to the great Loss and Injury of the Ship Owners, Merchants, Underwriters, and other concerned in Shipping: May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first day of August, One Thousand Eight and Nine, all Pilots, Boatmen, Hovellers, or other Persons who shall take up any Anchors, Cables, or any Goods or Merchandise which may have been parted with, cut from or left by any Ship or Vessel within any Harbours, Rivers, or Bays, or on any of the Coasts of this Kingdom, whether the same Ship or Vessel shall be or shall have been in Distress or otherwise, and which shall have been weighed, swept for or taken Possession of or by any such Boatman, Pilot, Hoveller, or other Person, shall send a Report in Writing of the Articles so found, and stating the Marks (if any) thereon, and also an accurate and particular Description of the Bearings, Distances, and Situations, and Time when and where the same were so found, to a Deputy Vice-Admiral or his Agent at or near to the Port or Place where such Boatman, Pilot, Hoveller, or other Person shall first arrive with such Articles, within Forty-eight Hours after his or their Arrival at such Port or Place, or before he or they shall leave the Port, if he or they shall quit it before that Time shall expire; and shall also within such Period as aforesaid deliver such Articles so found into a proper Warehouse, or such other Place as the Vice-Admiral of each County shall appoint for safe Custody, until the same shall be claimed by the Owner or Owners thereof, or his, her, or their Agent or Agents, and the Salvage, together with such other Charges and Expences as are hereinafter directed to be paid in respect of such Articles paid by him or them, or Security given for the Payment thereof, to the Satisfaction of the Salvor of Salvors thereof; and every such Pilot, Boatman, Hoveller, or other Person who shall wilfully and fraudulently keep Possession of or retain, or conceal or secrete any Anchors or Cables so found, weighed, swept for or taken Possession of as aforesaid, and shall not report and deliver the same at some proper Warehouses or other Place in the Manner aforesaid, and within the Time herein-before limited, shall on Conviction be adjudged and deemed guilty of receiving Goods knowing them to have been stolen, and shall suffer the like Punishment as if the same had been stolen on Shore.

Pilots and others taking Possession of Anchors, Cables and other Ships Materials shall send a Report thereof to a Deputy Vice-Admiral, and deposit the same in Places to be appointed; or shall be considered as Receivers of stolen Goods.

II. & III. [Deputy Vice-Admiral shall send Report to Trinity House, as soon as the Articles amount to £ 20 Value.]

IV. And be it further enacted, That it shall be lawful for any Deputy Vice-Admiral, or his Agent, to seize and detain any such Article as shall not have been reported in the Manner herein-before directed, and upon such Seizure such Deputy Vice-Admiral, or his Agent, shall deposit the same in the Warehouse or other Place to be appointed as aforesaid, and shall within Two Days thereafter send a Report in Writing of the Articles so seized, and stating the Marks (if any) thereon, to the said Corporation of the Trinity House of Deptford Strand as before directed, to be made public as aforesaid; and every such Deputy Vice-Admiral, or his Agent, so seizing, who shall not make such Report as aforesaid, within Two Days after Seizure as aforesaid, shall, on Conviction before any Justice of the Peace or Magistrate, upon the Oath of One credible Witness, or on the Con-

Deputy Vice-Admiral may seize Goods not reported and deposited and shall have One Third of the Value (See § 6.)

No. 26.

49 G. III. c. 122.

No. 26.
49 G. III. c. 122.

fession of the Party offending, forfeit and pay the Sum of Twenty Pounds for every such Neglect, together with Double the Value of the Goods so seized; One Half of which Penalty shall be paid to the Informer, and the other Half to the Poor of the Parish or Township where such Offence shall be committed; and every Deputy Vice-Admiral, or his Agent, who shall make any such Seizure, without any previous Information being given to such Deputy Vice-Admiral or his Agent, shall, on the same Articles being claimed by and delivered to the Owner thereof, or his or her Agent, be entitled to receive such Sum of Money as shall be equal to One Third Part of the Value thereof.

Value may be ascertained as on Salvage (See § 8, &c.)

If Deputy Vice Admiral seize on Information, Informer shall share in One Third. (See sec. 4, 12, &c.)

Articles not claimed within a Year shall be sold under Stat. 12 Anne, c. 18.

Deputy Vice Admiral seizing seizing, and Informer shall be equally entitled to Salvage

Two Justices empowered to determine Differences respecting Salvage of such Articles.

Such Justices may nominate a third Person as Umpire

V. Provided always, and be it further enacted, That if the Owner and Deputy Vice Admiral or Agent so seizing cannot agree on the Value of the Articles, such Value shall be ascertained in like Manner as is hereinafter directed with regard to Salvage.

VI. Provided also, and be it further enacted, that if any such Seizure shall have been made in consequence of any Information given to any such Deputy Vice Admiral or his Agent, the Deputy Vice Admiral or his Agent so seizing, shall only be entitled to receive from the Owner or the Agents of the Articles One Sixth Part of the Value thereof, and One other Sixth Part of such Value shall be paid to the Person who shall have given the Information; the Value of such Articles shall be ascertained in Manner aforesaid.

VII. And be it further enacted, That if any such Articles so reported and delivered into the Warehouse or other Place as aforesaid, shall not be claimed within a Year and a Day after such Report shall have been transmitted to the said Corporation of the Trinity House of *Deptford Strand*, as before mentioned, the same shall be sold, and a Certificate of such Sale shall be delivered to the Purchaser under the Directions of the High Court of Admiralty, and the Monies arising from the Sale thereof be applied in the Manner directed in and by an Act passed in the Twelfth Year of the Reign of her late Majesty Queen Anne, intituled *An Act for preserving off such Ships and Goods thereof which shall happen to be found on Shore or stranded on the Coast of this Kingdom, or any other of her Majesty's Dominions*, and if the same shall have been seized by the Deputy Vice-Admiral or his Agent as aforesaid, then the Deputy Vice-Admiral or Agent so seizing and the Person who shall have given such Information shall have led to the Seizure (if any such Information shall have been given) shall be equally entitled to the Salvage which shall be allowed by the High Court of Admiralty to the Salvors in the Case of unclaimed Property.

VIII. And be it further enacted, That if the Salvors of any such Articles, or any Goods so found, weighed, swept for, or taken Possession of as aforesaid, and so lodged and reported as aforesaid, and the Owner or Owners thereof, or his, her, or their Agent or Agents, cannot agree respecting the Amount of Salvage to be paid for or in respect of the same, or the Value thereof, as the Case may be, then the Matter in Difference shall be determined by any Two Justices of the Peace residing near to the Place where such Articles or Goods shall be deposited; and such Justices shall begin to proceed in their Enquiry as to such Matters in Dispute, within Forty-eight Hours after such Difference shall be referred to them for their Determination thereof; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any Third Person conversant in Maritime Affairs, in their Opinion, who shall ascertain the Amount of the Salvage to be paid, or the Value thereof, as the Case may be, within Forty-eight Hours after he shall have been so nominated as aforesaid, and the said Justices and such Third Person so nominated as aforesaid,

shall have full Power and Authority, whenever they see Occasion, to examine the Parties or their Witnesses upon Oath, which Oath they are hereby authorized to administer. No. 26.
49 G. III. c. 122.

IX. And be it further enacted, That it shall also be lawful for the said Justices to decide in the like Manner, and within the same Time as is herein-before directed, with regard to Salvage on all Claims and Demands whatsoever which shall or may after the First Day of August One Thousand Eight Hundred and Nine, be made by Pilots, Boatmen, and other Persons, for Services of any Description (except Pilotage) to be rendered by them to any Ship or Vessel, as well for carrying off from the Shore to such Ship or Vessel any Anchors, Cables, or other Stores, from any Port or Ports of the Coast of *England and Wales* and *Berwick upon Tweed*; or for the saving and preserving any Goods or Merchandize which may have been wrecked, stranded, or cast away from any ship or Vessel, or for being Instrumental in saving the Life or Lives of any Person or Persons on board the said Ship or Vessel, the Master, Owner, Owners of such Ship or Vessel, or his, her, or their Agent or Agents being present with such Justices; and that the said Justice or such other Person so appointed as aforesaid, shall have full Power and Authority to hear and determine on all Cases whatever of Services rendered by Pilots, Boatmen, and others to Ships or Vessels (except Pilotage) whether such Ships or Vessels shall at the Time be in Distress or not; and that they shall have the like Power of examining the Parties or their Witnesses upon Oath as last herein-before directed; and the Decision of such Justices, or of the Person so to be by them appointed as aforesaid, shall be final and conclusive on all Parties, save and except in such Cases in which an Appeal shall be interposed by either Party to the High Court of Admiralty, such Appeal to be interposed within Thirty Days after the Award of the Justices or such Person so appointed as aforesaid.

Two Justices may determine upon Remuneration for Services to Ships in Distress, (except Pilotage) &c.

Decisions of Justices or their umpire shall be final: unless on Appeal to Admiralty.

X. And be it further enacted, That in case the Person or Persons so claiming to be entitled to Salvage, or the Party or Parties who is or are to pay the same, or their Agents, shall be dissatisfied with such Award and Decision of the Justices, or of the Person so to be nominated by them as aforesaid, it shall be lawful for either of them respectively, within Forty-eight Hours after such Award is made, but not afterwards, to declare to the Justices, or such other Person to be nominated by them as aforesaid, his, her, or their Desire of obtaining the Judgment of the High Court of Admiralty respecting the said Salvage, and thereupon the Person or Persons so claiming to be entitled to Salvage shall be compelled to proceed within Thirty Days from the Date of such Award, by taking out a Monition against the adverse Party; but in such Case the said Justices are hereby required and empowered to deliver to the Owners and Proprietors or their Agents, any such Anchor or Cable, Goods, or other Articles respecting which any Claim for Salvage shall be made upon the Owners or Proprietors thereof, his, her, or their Agent, giving good and sufficient Bail in Double the Amount of the Value of the Articles in respect of which such Salvage shall be claimed, and which Bail shall be taken by a Commissioner for taking Examinations in Prize Causes, if there shall be one in the Port or Place where such Difference shall arise, but if there shall be no Commissioner there, then the said Justices to whom such Difference shall have been referred, or either of them, or any other of his Majesty's Justices of the Peace, are and is hereby authorized to take the same; and the Commissioner or Justice who shall take such Bail shall certify the same according to the Form contained in the Schedule hereunto annexed, and transmit the same without Delay to the High Court of Admiralty, together with a true Certificate in Writing of the gross Value of the Whole of the Articles.

Persons dissatisfied may appeal to the High Court of Admiralty, but the Goods shall be restored to the Owners on giving Bail.

See Schedule (A.)

No 26. respecting which Salvage shall be claimed, and also a Copy of such
 49 G. III. c. 122. Proceedings and Awards on unstamped Paper, certified under the
 Hand of such Commissioner or Justice taking the Bail as aforesaid,
 and the same shall be admitted by such Court of Admiralty as Evidence
 in the Cause.

Umpire named by
 Justices shall be
 paid by the Par-
 ties.

XI. And be it further enacted, That it shall and may be lawful
 for the Persons so to be named by the said Justices as aforesaid, who
 shall decide on the Amount of Salvage to be paid, or on the Value
 of the Articles, or on the Remuneration to be made to Persons ren-
 dering Assistance to Ships or Vessels, or Persons as aforesaid, to de-
 mand and receive of and from the Owner or Owners of the Articles
 saved, or of the Ships or Vessels in behalf of which the Services may
 have been rendered, or his, her, or their Agent or Agents, a Sum of
 Money not exceeding Two Pounds Two Shillings each, and such
 Owner or Owners, or his, her, or their Agents shall and is and are
 hereby required to pay to the Persons so to be by the said Justices
 nominated as aforesaid, such Fee or Reward immediately after he
 shall have made his Award or Decision, and on Delivery of the
 same.

Penalty on cutting
 away or raising
 Buoy, Boat
 Rope, &c. Single
 Felony, &c.

XII. And be it further enacted, That if any Person or Persons
 shall, from and after the First day of August, One Thousand Eight
 Hundred and Nine, wilfully cut away, cast adrift, remove, alter, de-
 face, sink, or destroy, or in any other way injure or conceal any
 Buoy, Buoy Rope, or Mark, belonging to any Ship or Vessel, or
 which may be attached to any Anchor or Cable belonging to any Ship
 or Vessel whatever, whether in Distress or otherwise, such Person or
 Persons so offending shall, on being convicted of such Offence, be
 deemed and adjudged to be guilty of Felony, and shall be liable to be
 transported for any term not exceeding Seven years, or in Mitigation
 of such Punishment to be imprisoned for any Number of Years at the
 Discretion of the Court at which the Conviction shall be made.

Penalty on pur-
 chasing Anchors,
 &c. contrary to
 this Act, Misde-
 meanor, &c.

XIII. And be it further enacted, That if any Person or Persons
 shall knowingly and wilfully, and with Intent to defraud and injure the
 true Owner or Owners thereof, or any Person interested therein as
 aforesaid, purchase, or receive any Anchors, Cables, or Goods, or
 Merchandize, which may have been taken up, weighed, swept for, or
 taken Possession of, whether the same shall have belonged to any Ship
 or Vessel in Distress or otherwise, or whether the same shall have been
 preserved from any Wreck, if the Directions herein before contained
 with regard to such Articles shall not have been previously complied
 with, such Person or Persons shall on Conviction thereof be deemed
 guilty of receiving stolen Goods, knowing the same to be stolen, as
 if the same had been stolen on Shore, and suffer the like Punishment
 as for a Misdemeanor at the Common Law, or be liable to be trans-
 ported for seven Years, at the Discretion of the Court, before which
 he, she, or they shall be tried.

XIV. [Masters of Ships bound to Ports beyond the Seas, finding
 or taking on board Anchors and other Articles, shall report the same
 to the Trinity-House, and on their Arrival in England shall deposit
 them. Penalty 200l. to 50l. Half to Informer and Half to Merchants
 Seamen's Society under 20 Gen. II. c. 30.]

XV. [Fees to be paid for Reports.]

Penalty on selling
 or disposing of
 Anchors or Cables
 in foreign Coun-
 tries, single Fel-
 ony.

XVI. And whereas Pilots, Hovellers, Boatmen, and other Per-
 sons in small Vessels have for many Years conveyed Anchors and
 Cables which may have been weighed, swept for, or taken possession
 of by them as aforesaid, or which they may have purchased of other
 Persons, knowing them to have been weighed, swept for, or taken
 possession of without being reported as aforesaid, to Foreign Coun-
 tries, and there sold and disposed of to the manifest Injury and Loss

' of the Owners, thereof; for remedying whereof, ' Be it further enacted, No. 26.
That every Pilot, Hoveller, Boatman, or the Master of any such Ves- 49 G. III. c. 123.
sel, who shall convey after the said First Day of August, One Thou-
sand Eight Hundred and Nine, any such Anchor or Cable to any For-
eign Port, Harbour, Creek, or Bay, and there sell and dispose of the
same, shall be deemed and adjudged guilty of Felony, and shall be
transported for any Term not exceeding Seven years.

XVII. And be it further enacted, That all Persons who shall
trade or deal in buying or selling Anchors, Cables, Sails, or old
Junk, old Iron, or Marine Stores of any Kind or Description, shall
have their Names with the Words, " Dealer in Marine Stores,"
painted distinctly in Letters of not less than Six Inches in Length upon
the Front of their Storehouses, Warehouses, and other Deposits
of such Goods; and in default of their so doing, they shall, on Convic-
tion before any Justice or Justices of the Peace, or Magistrate or Ma-
gistrates of any Jurisdiction where such Storehouse, Warehouse, and
Depot shall be, upon the Oath of One credible Witness, or on Con-
fession of the Party offending, forfeit and pay a Sum not exceeding
Twenty Pounds, nor less than Ten Pounds, One Half of which
Penalty shall be paid to the Informer, and the other Half to the Poor
of the Parish or Township where such Offence shall be committed;
and that it shall not be lawful for such Dealers or Traders to cut up
any Cable, or any Part of a Cable, exceeding Five Fathoms in Length,
or uncant, untwine, or unlay the same into Junk or Paper-stuff, on
any Pretence whatsoever, without first obtaining a Permit from some
Justice of the Peace or Magistrate residing near to the Residence of
such Dealer, which Permit shall not be granted unless an Affidavit
shall have been made that the Cable so intended to be cut up had been
bona fide purchased, and without Fraud, by the Party so intending to
cut up the same, and without any Knowledge or Suspicion on his or
her Part that the same had been or were dishonestly come by: and in
which Affidavit shall also be specified the particular Quality and Des-
cription of such Cable, and the Name or Names of the Seller or Sel-
lers thereof, which Affidavit shall be recited and set forth at length in
the Permit thereupon granted, on pain of forfeiting for the First Of-
fence any Sum not exceeding Twenty Pounds nor less than Ten
Pounds, and for every Second or further Offence any Sum not exceed-
ing Fifty Pounds nor less than Twenty Pounds, to be recovered before
any Justice of the Peace, and One Half thereof to go to the Informer,
and the other Half to the Poor of the Parish in which such Offence
shall have been committed.

Dealers in Marine
Stores shall have
their Names painted
on their Store-
houses. Penalty
20l. Such Dealers
shall not cut up
Cables without a
Permit from a Ma-
gistrate, to be
granted on Affi-
davit, &c.

Penalty 10l.

XVIII. And be it further enacted, That for the more effectual
Prevention of such Frauds, all Dealers in such Marine Stores as afore-
said shall keep a Book or Books fairly written, in which Entries shall
be from Time to Time regularly made of all such old Marine Stores as
shall be by them from Time to Time bought, containing a true
Account and Description of the Times when the same were so re-
spectively bought by them, and of the Names and Places of Abode
of the respective Sellers thereof: And before any Person who shall
obtain such Permit for the cutting up of any such Cable (as herein-
before required to be, obtained) shall proceed to cut up the same by
virtue thereof, there shall be published by the Space of One Week at
least before the cutting up the same, One or more Advertisement or
Advertisements in some publick Newspaper, printed nearest to the
Storehouse, Warehouse, or Depot where the Articles shall be depo-
sited, notifying that such Party had obtained such Permit for the
Purpose of cutting up such Cable, and of such Kind and Quality as
therein described, and also specifying the Place where such Articles
shall be deposited; whereupon it shall be lawful for all and every

Dealers shall keep
an Account of old
Stores bought by
them. Shall ad-
vertise before cut-
ting up of Cordage

No. 26.
 G. III. c. 122.
 Inspection of such
 Accounts may be
 demanded by Par-
 ties interested.

Penalty on Deal-
 ers for Neglect.

Person or Persons who may have just Cause to suspect that such Articles are the Property of such Person or Persons, and shall have verified upon Oath the Fact of such his, her, or their Suspicion before any Justice of the Peace or Magistrate residing near to the said Storehouse, Warehouse, or Depot, by Warrant for that Purpose thereupon granted, to require of and from such Dealer who shall have so advertised, and shall be sworn to be suspected as aforesaid, the Production and Examination of the Book or Books of Entries hereby required by him or her to be kept, and inspect and examine the Cables described in such Permit; and in case any such Dealer, when so thereunto required as aforesaid, shall neglect or refuse to produce to the Person named in such Warrant as the Person on whose Oath the same shall have been obtained, the Book or Books containing the Entries of such Dealer so required to be made therein as aforesaid, or shall neglect to keep any such Book or Books in which Entries containing Accounts of the several Particulars hereinbefore required to be entered shall be made, or to permit such Inspection or Examination as aforesaid, or shall after obtaining such Permit for the cutting up of any such Cable, and before the cutting up of the same, neglect to publish such One or more Advertisement or Advertisements relative thereto as is hereinbefore directed and required, the Dealer or Dealers so offending in all or any of the Particulars hereinbefore mentioned shall forfeit and pay for such Offence, being his, her, or their First Offence, any Sum not exceeding Twenty Pounds, nor less than Ten Pounds, and for every Second or further Offence any Sum not exceeding Fifty Pounds, nor less than Twenty Pounds, One Half of which Penalty shall on Conviction before any Justice of Peace or Magistrate residing near as aforesaid, be paid to the Informer, and the other Half to the Poor of the Parish or Township in which such Offences shall be committed; and in case any of the Penalties by this Act imposed shall not be paid, with the Charges incident to the Conviction, immediately upon such Conviction, the same shall and may be levied by Warrant under the Hand and Seal of such Justice of the Peace or Magistrate, upon the Goods and Chattels of any such Offender or Offenders; and in case no sufficient Distress shall be found, then every such Offender or Offenders shall and may be committed by any such Justice of the Peace or Magistrate as aforesaid, to Gaol, in case of any First Offence for the Space of Six Calendar Months, and in case of any Second or further Offence for the Space of Twelve Calendar Months, unless the said Penalty and the Charges shall be sooner paid.

Manufacturers
 shall put Marks on
 Anchors & Kedge
 Anchors.

XIX. And be it further enacted, That from and after the First Day of August One Thousand Eight Hundred and Nine, all Manufacturers of Anchors, Kedge Anchors shall place his, her, or their Name or Names, together with a progressive Number, and also the Weight of the Anchor, in legible Characters upon the Crown, and also upon the Shank under the Stock of each Anchor which he, she, or they shall manufacture, and shall also place his, her, or their Name or Names, together with a Number, and also the weight of the Kedge Anchor upon the Crown, and also upon the Shank near to the Stock of every Kedge Anchor which he, she, or they shall manufacture, and in case any such Manufacturer shall neglect to place such Name, Number, Weight in this Manner hereby directed and required, every such Person or Persons so offending shall, on Conviction before any Justice of the Peace or Magistrate, on the Oath of One credible Witness, or on the Confession of the Party so offending, forfeit and pay any Sum not exceeding Five Pounds, nor less than Forty Shillings, One Half of which Penalty shall be paid to the Informer, and the other Half to the Poor of the Parish or Township in which such Offence shall be committed.

XX. 'And, for the more easy and speedy Conviction of Offenders against this Act,' Be it further enacted, That all and every Justice and Justices of the Peace before whom any Person shall be convicted of any Offence against this Act, shall and may cause the Conviction to be drawn up according to the following Form; *videlicet* :

No. 26.

49 G. III. c. 122.

Form of Conviction.

'**B**E it remembered, That on the _____ Day of _____ in the Year of our Lord _____ *A. B. is convicted before me [or, u.] One [or, Two, as the Case may be] of his Majesty's Justices of the Peace for _____ [here specify the Offence, the Time and Place when and where committed, as the Case may be] contrary to an Act passed in the Forty-ninth Year of the Reign of King GEORGE the Third, intituled, [here insert the Title of this Act]. Given under my Hand and Seal [or, our Hands and Seals] the Day and Year first above written.'*

And no *Certiorari* or other Writ or Process for the Removal of any such Conviction, or any proceedings thereon, into any of his Majesty's Courts of Record at *Westminster*, shall be allowed or granted.

XXI. And be it further enacted, That it shall and may be lawful to and for any Person or Persons so convicted by any Justice or Justices of the Peace before mentioned of any Offence or Offences against this Act, within Three Calendar Months next after such Conviction, to appeal to the Justices of the Peace assembled at the General Quarter Sessions holden for the County, City or Place where the Master of Appeal shall arise, first giving Ten Days Notice of such Appeal to the Person or Persons appealed against, and of the Matter thereof, and entering into a Recognizance before some Justice of the Peace for such County, City, or Place, with Two sufficient Sureties conditioned to try such Appeal, and for abiding the Determination of the Court therein; and such Justices at the General Quarter Sessions shall, upon due Proof of such Notice having been given, and Recognizances entered into, hear and determine the Matter of such Appeal, and may either confirm, or quash and annul the said Conviction, and award such Costs to either Party as to them shall seem just and reasonable, and the Decision of the said Justices therein, shall be final, binding, and conclusive; and no Proceeding to be had or taken in pursuance of this Act, shall be quashed or vacated for Want of Form only, or be removed by *Certiorari*, or any other Writ or Process whatsoever, into any of his Majesty's Courts of Record at *Westminster* or elsewhere, any Law or Statute to the contrary thereof in any wise notwithstanding.

Appeal to General Quarter Sessions.

XXII. [Inhabitants competent Witnesses.]

XXIII. [Offences may be tried where Articles found, or if sold in foreign Parts, where Offenders may reside.]

XXIV. [This Act shall not affect Statute 48 Geo. III. c. 130.]

XXV. Provided also, That nothing in this Act contained shall extend or be construed to extend to repeal, take away, or alter any of the Clauses, Powers, or Provisions contained in an Act of Parliament made in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act for the better Regulation of Pilots and of the Pilotage of Ships and Vessels navigating the British Seas*, but that the said Act shall remain in full Force as if this Act had not passed.

Nor shall affect Stat. 48 Geo. III. c. 104.

XXVI. [Reservation of the Rights of the High Court of Admiralty.]

XXVII. [Reservation of the Rights of the Crown, and of Lords of Manors.]

No. 26.
49 G. III. c. 122.

XXVIII. [Reservation of the Rights of the Trinity House of Deptford Strond.]

XXIX. [And of the Rights of the Trinity Houses of Kingston, Newcastle, and Scarborough.]

XXX. [And of the Rights of the City of London.]

XXXI. Provided also, and be it hereby further enacted, That nothing in this Act contained shall extend or be construed to extend to those Parts of the United Kingdom of Great Britain and Ireland called Scotland and Ireland.

XXXII. [Regulations of 12 Anne, Stat. 2, c. 18, as to adjusting and recovering Quantum of Salvage, extended to Cases of Salvage where Sailors have acted under Authority of a Magistrate or the Captain, &c. of the Vessel in Distress.]

" Publick Act, § 38.

Continuance of
the Act.

XXXIV. And be it further enacted, That this Act shall continue in Force for Seven Years from the passing hereof.

SCHEDULE to which this Act refers.

[See Sec 10]

ON the _____ Day of _____ in the Year _____ of our Lord _____ before me _____ at _____ in the County of _____ [Ship's Name] A. B. [Here insert the Names of the Salvors against and name the Stores and other Articles; (id est) Anchors and Cables, &c. as the Case may be] certain Goods and Merchandizes lately found and taken possession of and belonging to the said Ship, whereof _____ was Master, and also against the said _____ Master and the Owners [or if the Owners alone appear by themselves or Agents, then leave out the Master's Name] of the said Goods and Merchandize in a Cause of Salvage. [Master's Name.] On which Day appeared personally _____ of _____ and _____ who produced themselves as Sureties for the said _____ the Master and for the Owners of the said Goods and Merchandize, and, submitting themselves to the Jurisdiction of the High Court of Admiralty of England, bound themselves, their Heirs, Executors, and Administrators for the said Master and Owners of the said Goods and Merchandize, in the Sum of _____ of lawful Money of Great Britain, unto the said _____ to answer such Salvage and Expences, or the Value of the Goods as the Case may be, as shall be hereinafter decreed by the said Court, according to the Tenor of the Act in that Case made and provided; and unless they shall do so, they hereby consent that Execution shall issue forth against them, their Heirs, Executors, and Administrators, Goods and Chattels, wherever the same shall be found, to the Value of the Sum above mentioned.

This Bail was duly taken, acknowledged, and received at the Time and Place above written, before me the undersigned Commissioners, and I do believe and consider the Persons above mentioned sufficient Security for the said Sum of _____

No. 27.

32 George III. c. 39.—An Act for the more effectual Regulations of Pilots, and of the Pilotage of Ships and Vessels on the Coast of *England*. (1)

[23th April 1812.

XXVI. Provided always, and be it further enacted, That no Owner or Master of any Ship or Vessel shall be answerable for any Loss or Damage, nor shall any Owner or Owners of any Ship or Vessel, or Consignee of Goods, be prevented from recovering any Loss or Damage upon any Contract of Insurance of the same, or upon any other Contract relating to any Ship or Vessel, or any Cargo on board the same, by reason of no Pilot being on board of any such Ship or Vessel, unless it shall be proved that the Want of a Pilot shall have arisen from any Refusal to take a Pilot on board, or from the wilful Neglect of the Master of the Ship or Vessel, in not heaving to or using all practicable means consistently with the Safety of the Vessel, for the Purpose of taking on board any Pilot who shall be ready and offer to take Charge of such Ship or Vessel.

32 Geo. III. c. 39.
Owners or Masters of Ships not answerable for Loss, nor Consignees prevented from recovering for want of Pilots, &c.

XXVII. Provided also, and be it further enacted, That no Owner of any Ship or Vessel shall be liable, in any such case, for any Loss or Damage beyond the Value of such Ship or Vessel and her Appurtenances, and the Freight due or to grow due for and during such Voyage wherein such Loss or Damage may happen or arise.

Owners not liable for more than Value of Ship and Freight.

XXVIII. Provided always, and be it further enacted, That nothing in this Act contained, shall extend or be construed to extend to any Ships or Vessels belonging to his Majesty, his Heirs and Successors, as to their being compelled to take Pilots on board.

Proviso for Ships of his Majesty; and for Vessels not exceeding 60 Tons.

XXIX. Provided always, and be it further enacted, That none of the Clauses, Provision, Penalties, or Regulations of this Act, shall extend, or be construed to extend, to any Vessel not exceeding the Burthen of Sixty Tons, having *British* Registers, nor to any Master or Owner of any such Vessel in respect thereof, or of the navigating of the same in any Channel, River, Port or Place whatever.

XXX. Provided always, and be it further enacted, That no Owner or Master of any Ship or Vessel shall be answerable for any Loss or Damage, nor shall any Owner or Owners of any Ship or Vessel, or Consignee of Goods, be prevented from recovering any Loss or Damage upon any Contract of Insurance of the same, or upon any other Contract relating to any Ship or Vessel, or any Cargo on board the same, for or by reason or means of any Neglect, Default, Incompetency or Incapacity of any Pilot taken on board of any such Ship or Vessel, under or in pursuance of any of the Provisions of this Act.

Owners not liable for Loss arising from Incompetency of Pilots, &c.

XXXI. And be it further enacted, That nothing in this Act contained shall be construed to extend to deprive any Persons of any Remedy, by Civil Action against Pilots or other Persons, which they might have had if this Act had not been passed. (2)

Remedy by Civil Action.

(1) The Provisions of this Act, so far as they regard the Regulations and Appointment of Pilots, are too minute and limited in their Object to fall within the Design of the present Work. The Act repeals a preceding Act of 48 Geo. III. c. 104, "For the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the *British* Seas." The Sections which are selected appear to be of more general Importance.

(2) In *Camthers v. Sidebottom*, East. 1815, (not reported at the Time of printing this Sheet), it was ruled, that the Underwriters on a Policy of Insurance are answerable for a Loss occasioned by the Neglect or Want of Skill of a Pilot appointed under a local Act. A Case had been previously

No. 27.
52 Geo. III. c. 39.
Masters of Vessels
piloted by any
other than licensed
Pilot.

Penalty.

Exception.

Proviso.

All Acts relating
to regulation of
Pilots extended to
Act.

46 G. III. c. 104.

Preservation of
Beacons, 6 Eliz.
c. 13.

LIX. And be it further enacted, That the Master of every Ship or Vessel which shall be piloted or conducted by any other Person than a duly licensed Pilot, within any Limits for which Pilots have been or shall be appointed by any lawful Authority, shall forfeit Double the Amount of the Sum which would have been demandable for the Pilotage of such Ship or Vessel, and shall likewise forfeit an additional Penalty of Five Pounds for every Fifty Tons Burthen of such Ship or Vessel, if the Corporation of Trinity House of *Depford Strand*, as to cases in which Pilots licensed by or under the said Corporation shall be concerned, or the said Lord Warden for the time being, as to all cases in which the Cinque Port Pilots shall be concerned, shall think it proper that the Person prosecuting should be at Liberty to proceed for the Recovery of such additional Penalty, and certify the same in Writing: Provided always, that nothing in this Act shall extend to subject to Penalties any Master of any Ship or Vessel (not anchoring within the Limits of any Port or Place for which Pilots are or shall be appointed) who shall act himself as Pilot in passing up and down the *English Channel* or elsewhere, in passing by any Part of the Coast of *England* in the Course of any Voyage, or within the Limits of the Port or Place to which his Ship belongs, not being a Port or Place in relation to which Provision hath heretofore been made by any Act or Acts of Parliament, or by any Charter or Charters for the Appointment of Pilots, or who shall employ any Person as a Pilot, or who shall act himself as such for the Conduct of his Ship or Vessel, in any case where and so long as a duly qualified Pilot shall not offer Assistance or make a Signal for that Purpose: Provided also, that this Act shall not extend or be construed to extend to hinder any Persons from assisting any Ship or Vessel in Distress at any Time or Place, nor shall subject such Persons, or any Master of any Ship or Vessel employing such Persons, to the Penalties of this Act, in respect of such Assistance given during this Distress of such Ship or Vessel, or in consequence thereof, or under any Circumstances which shall have rendered it necessary for such Master to avail himself of the best Assistance which at the Time could be procured; any thing herein contained to the contrary thereof in any wise notwithstanding.

LXVI. And be it further enacted, That all Acts of Parliament, and all Clauses, Provisions, Powers, Authorities, Regulations, Penalties and Forfeitures, contained in any Act which in any manner relate to the Regulation of Pilots or Pilotage within any River, Port or Harbour, or within any local Limits specified in any such Act, Clause or Provision, and in which any Reference is made to the said Act of the Forty-eighth Year aforesaid, or in any manner apply thereto, or vary or alter any of the Provisions thereof as to Pilots or Pilotage within any such Limits, shall continue in full Force, notwithstanding the Repeal of the said Act of the Forty-eighth Year aforesaid, and be deemed to refer and apply to this Act, and shall be so construed as if the same were particularly referred to in this Act; any thing in this Act to the contrary notwithstanding.

LXVII. And be it further enacted, That all the Provisions, Clauses, Penalties and Forfeitures, contained in an Act passed in the Eighth Year of the Reign of Queen ELIZABETH, or any other Act or

argued in the Exchequer (the Attorney-General v. Case) upon the Question, whether the Owners of a Ship are liable for an Injury done to another Vessel by the Neglect or Misconduct of such Pilot, upon which no Decision has been given; but the Question seems to be decided by *Camthers v. Sidebottom*, as involving the general Principle, that the Acts of a Pilot so appointed are not imputable to the Owners of a Ship.

Acts made and in force for the Preservation of Beacons and Sea Marks, shall extend and be construed to extend to all Vessels duly appointed to exhibit Lights therein for the Preservation of Ships and Vessels at Sea, and to all Persons removing, injuring or destroying such Vessels or Lights; which Offences may be laid and tried in any County in *England*. No. 27.
52 Geo. III. c. 39.

LXVIII. And be it further enacted, That every Person who shall ride by, make fast to, or remove, or wilfully or negligently run down or run foul of any Vessel appointed or placed to exhibit Lights, or any Buoy or Beacon, belonging to the said Corporation of Trinity House of *Deptford Strand*, or belonging to or placed by any other Corporation having lawful Authority to place the same, shall forfeit for every such Offence any Sum not exceeding Fifty Pounds, nor less than Ten Pounds, together with the Expence of replacing or making good any Damage occasioned by such Misconduct. Riding by, &c.
any Beacon.

Penalty.

No. 28.

53 George III. c. 36.—An Act to amend an Act, passed in the Forty-third Year of his present Majesty, for regulating the Vessels carrying Passengers to his Majesty's Plantations and Settlements Abroad.

[15th April, 1813.]

No. 29.

53 George III. c. 111.—An Act for the more easy manning of Ships and Vessels employed in the *Southern* Whale Fishery. [10th July, 1813.]

No. 30.

53 George III. c. 159.—An Act to limit the Responsibility of Ship Owners, in certain Cases.

[21st July, 1813.]

WHEREAS it is of the utmost Consequence and Importance to promote the Increase of the Number of Ships and Vessels belonging to the United Kingdom, registered according to Law, and to prevent any Discouragement to Merchants and others from being interested therein: And whereas it is expedient to amend an Act made in the Seventh Year of the Reign of his late Majesty King GEORGE the Second, intituled *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners*; and also another Act made in the Twenty-sixth Year of the Reign of his present Majesty, intituled *An Act to explain and amend an Act made in the Seventh Year of his late Majesty's Reign, intituled 'An Act to settle how far Owners of Ships shall be answerable for the* 53 G. III. c. 159.

7 Geo. II. 15.
25 Geo. III. c. 86.

No. 30. *'Acts of Masters or Mariners,' and for giving a further Relief to the Owners of Ships*, and that other Provisions should be made in respect thereof, be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person or Persons who is, are, or shall be Owner or Owners, or Part Owner or Owners of any Ship or Vessel, shall be subject or liable to answer for or make good any Loss or Damage arising or taking place by reason of any Act, Neglect, Matter, or Thing done, omitted, or occasioned, without the Fault or Privy of such Owner or Owners, which may happen to any Goods, Wares, Merchandize, or other Things laden or put on board the same Ship or Vessel, after the First Day of September, One Thousand Eight Hundred and Thirteen may happen to any other Ship or Vessel, or to any Goods, Wares, Merchandize, or other Things, being in or on board of any other Ship or Vessel, further than the Value of his or their Ship or Vessel, and the Freight due or to grow due for and during the Voyage which may be in prosecution or contracted for at the Time of the happening of such Loss or Damage.

Owners of Ships shall not be liable to answer for any Damage occasioned by reason of their Fault, further than the Value of their Vessels.

Value of the Carriage of Goods, &c. to be considered as Freight

II. And be it further enacted, That the Value of the Carriage of any Goods, Wares, or Merchandize, belonging to the Owner or any of the Owners of such Ship or Vessel, and also the Hire due or to grow due under or by Virtue of any Contract whether made by or on the Behalf of his Majesty, or by or on the Behalf of any other Person or Persons, or any Body Politic or Corporate whatsoever, except only such Hire as in the Case of a Ship or Vessel hired for Time, may not begin to be earned until the Expiration of Six Calendar Months after the happening of such Loss or Damage, shall be deemed and taken to be, and shall be considered as Freight, within the Intent and Meaning and for the Purposes of this Act, and also of the said Acts of Parliament made in the Seventh Year of the Reign of his late Majesty King GEORGE the Second, and in the Twenty-sixth Year of the Reign of his present Majesty.

Providing for separate Losses

III. And be it further enacted, That in case any such Loss or Damage shall arise or happen by more than one separate and distinct Accident, Act, Neglect, or Default, or on more than one Occasion in the Course or Progress of a Voyage, or after the End of any Voyage, and before the Commencement of another Voyage, each and every such Loss or Damage shall be paid, compensated, and satisfied according to the Provisions of this Act, in such and the same Way, and to the same Extent, as if no other Loss or Damage had happened or arisen during the same Voyage, or after the End of any Voyage and before the Commencement of another Voyage.

Act not to take away Responsibility of Master or Mariners of such Ship

IV. Provided always, and be it further enacted, That nothing herein contained shall lessen or take away any Responsibility to which any Master or Mariner of any Ship or Vessel may now by Law be liable, notwithstanding such Master or Mariner may be an Owner or Part Owner of his Ship or Vessel.

Act not to extend to Owners of Lighters, &c.

V. Provided also, and be it further enacted, That nothing herein contained shall extend or be construed to extend to the Owner or Owners of any Lighter, Barge, Boat, or Vessel, of any Burthen or Description whatsoever, used solely in Rivers or Inland Navigation, or any Ship or Vessel not duly registered according to Law.

Actions may be brought for Damage by Persons suffering Loss if Owners have sustained Loss by the same Act

VI. Provided also, and be it further enacted, That nothing in this Act contained shall extend to prevent any Action or Suit being brought or instituted, or proceeded in, in any Court of competent Jurisdiction, by any Person or Persons who shall have suffered any Loss or Damage within the Intent and Meaning of this Act, against any Owner or Part Owner of any Ship or Vessel, notwithstanding any

other Person or Persons may have suffered any Loss or Damage by the same Accident, Act, Neglect, or Default, or on the same Occasion; but that all such Actions and Suits shall and may be brought or instituted, and proceeded in, in such Manner as the same might have been brought or instituted, or been proceeded in, if this Act had not been made; subject nevertheless to such Order as any Court may think fit to make, to restrain Proceedings in such Action or Suit, on special Circumstances, as Justice and Equity shall require.

VII. And be it further enacted, That if several Persons shall suffer any Loss or Damage in or to their Goods, Wares, Merchandizes, Ships or otherwise, by any means for which the Responsibility of any Owner or Owners is limited by this Act as aforesaid, and the Value of the Ship or Vessel, with all her Appurtenances, and the Amount of the Freight estimated as herein is mentioned, shall not be sufficient to make full Compensation to all and every the Person and Persons suffering such Loss and Damages, it shall and may be lawful to and for the Person or Persons liable to make Satisfaction for such Loss or Damage, or any One or more of them, on Behalf of himself, herself or themselves, and the other Owner or Owners of the same Ship or Vessel, to exhibit a Bill in any Court of Equity having competent Jurisdiction, against all the Persons who shall have brought any such Action or Actions, Suit or Suits as aforesaid, and all other Persons who shall claim to be entitled to any Recompence for any Loss or Damage arising or happening by the same separate and distinct Accident, Act, Neglect or Default, or on the same Occasion, to ascertain the Amount of the Value of the Ship or Vessel, Appurtenances and Freight, and for Payment or Distribution thereof rateably amongst the several Persons claiming Recompence as aforesaid, in Proportion to the Amount of the Losses or Damages sustained by such Persons so claiming such Recompence as aforesaid, according to the Rules of Equity, and as the case may require: Provided always, that the Plaintiff or Plaintiffs in such Bill shall annex to such Bill an Affidavit that he, she or they do not directly or indirectly collude with any of the Defendants thereto, or with any other Owner or Owners of the same Ship or Vessel, or with any other Person or Persons, but that such Bill is filed for the Purposes only of Justice, and to obtain the Benefit of the Provisions of this Act; and that the several Persons named as Defendants to the said Bill, are, as the Person or Persons making such Affidavit verily believes, all the Persons claiming to be entitled to Recompence for Loss or Damage sustained by the same Accident, Act, Neglect or Default, or on the same Occasion; and that all such Defendants do claim such Recompence, and to be entitled to Proportions of the Value of such Ship or Vessel, Appurtenances and Freight; and that no other Person claims to be entitled to any Proportion thereof under the Provisions of this Act, and that the Amount of the Value of such Ship or Vessel, Appurtenances and Freight, does not exceed a Sum to be specified in such Affidavit, and that the several Claims made by the Defendants to such Bill, do exceed the Amount of the Value of such Ship or Vessel, Appurtenances and Freight; and the Plaintiff or Plaintiffs in such Bill shall, on filing such Bill, apply to the Court and obtain an Order for the Liberty to pay into Court the Account of the Value of such Ship or Vessel, Appurtenances and Freight, as ascertained by such Affidavit, and shall pay the same into Court according to such Order; and no Defendant or Defendants to such Bill shall be compellable to put in any Answer thereto until such Value shall have been paid into Court as aforesaid, unless the Court shall for any special Cause think fit to order Security to be given for the same, in such manner as the said Court shall think fit, either instead of Payment thereof into Court as aforesaid, or until

No. 30.
53 G. III. c. 159.

Proceedings in case the Value of the Ship, &c. is not sufficient to make Compensation for Damages.

No. 30. such Court shall make other Order to the contrary; and unless such
 63 G. III. c. 159. Money shall be paid into Court as aforesaid, or the said Court shall
 make such Order for Security as aforesaid, and such Security shall be
 given according to the said Order within One Month after such Bill
 shall have been filed, such Bill shall immediately after the Expiration
 of such Month stand dismissed without any Motion for that Purpose;
 and the Court shall thereupon order the Payment of the said Suit to
 all the Defendants who shall then have appeared to such Bill; and in
 case such Security shall be given as aforesaid, and such Value shall
 afterwards be ordered to be paid into Court, and the same shall not
 be so paid within the time to be limited by the Court, such Bill shall
 also stand dismissed without Motion for that Purpose, and the said
 Court shall also order Costs to be paid to the Defendants as aforesaid;
 and in case any such Bill shall at any time be dismissed after any such
 Value shall have been paid into Court, or such Security given as
 aforesaid, such Court shall direct the Money so paid into Court, if any,
 to be paid to the several Claimants, Defendants to such Bill, who shall
 appear to the Court to be entitled to Proportions thereof, in such
 manner as to such Court shall appear to be just, and shall order any
 Security so to be given as aforesaid to be put in Suit, and the Money
 to be recovered thereupon to be paid into Court and distributed in like
 manner; and such Payments shall be without Prejudice to any Action
 or Suit which may be brought or instituted by any other Person or
 Persons, not Party or Parties to such Bill, for any such Loss or
 Damage as aforesaid, although such Loss or Damage shall have arisen
 or happened by the same Accident, Act, Neglect or Default, or on the
 same Occasion as the Losses or Damages for which Recompence shall
 be claimed by the Parties Defendants to such Bill, and all such Pay-
 ments as shall be made under the Order of the said Court shall be
 without Prejudice to the Recovery of the Costs in any Action or Suit
 which shall have been brought by any such Defendant or Defendants,
 unless such Costs shall be otherwise provided for by the said Court.

Amount of the
 Value of the Ves-
 sel, &c. be not
 paid, the Court
 shall require fur-
 ther Payment, &c.

VIII. Provided always, and be it further enacted, That it shall
 appear to the Court in which any such Bill shall be filed as aforesaid,
 that the Money paid into Court, or for which such Security shall be
 given as aforesaid, is not the true Amount of the Value of such Ship
 or Vessel, Appurtenances and Freight; the said Court shall order such
 further Sum of Money to be paid into Court, or such further Security
 to be given as to the said Court shall seem proper; and the said Court
 shall also at any time if the said Court shall see fit, order Security to
 be given for the Costs of such Suit as to the said Court shall seem
 necessary and just; and if such further Sum of Money shall not be
 paid, or such further or other Security shall not be given as aforesaid
 within the time limited by the said Court for that Purpose; such Bill
 shall stand dismissed without any Order for that Purpose; and the
 said Court shall thereupon order the Payment of the Costs of such
 Suit to the several Defendants by the Plaintiffs, and give the proper
 Directions for the Application of any Money paid into Court, or due
 on any Security given in such Suit to answer the Demands of the
 several Defendants in such Suit; as to such Court shall appear to be
 just.

In Abatement of
 Suits how Costs to
 be paid.

IX. And be it further enacted, That if after any such Suit shall
 have been instituted the same shall become abated or imperfect in the
 Whole or in Part, and the same shall not be revived or made perfect
 within the time to be limited by the Court for that Purpose, such
 Suit and all Proceedings therein shall stand dismissed without any
 Motion for that Purpose; and the said Court shall order the Costs of
 such Suit to be paid to the Defendants thereto, or to the Representa-
 tive of any who shall be then dead; and if the Plaintiff or Plaintiffs

in any such Suit, or any of them, shall be then dead, such Costs as shall not be otherwise paid shall be a Charge on the Assets of such deceased Plaintiff or Plaintiffs, and shall be recoverable as a Debt by Simple Contract. No. 30.
53 G. III. c. 159.

X. And be further enacted, That the Court in which any such Bill shall be filed as aforesaid, shall be and is hereby authorized and empowered to take all such Measures as to such Court shall seem just for ascertaining the Value of the Ship or Vessel, Appurtenances, and Freight, the Amount of the Losses or Damages claimed by the Defendants thereto respectively, and all such Matters and Things as shall be necessary for the Purposes of Justice in such Suit, and for Payment and Distribution of the Value of such Ship or Vessel, Appurtenances, and Freight, amongst the several Persons entitled thereto, and generally to do therein as shall appear to be just; and the Costs of all such Proceedings shall be paid by the Plaintiff or Plaintiffs in such Suit, unless such Court shall think fit otherwise to order. Court to take Measures for ascertaining the Value of Vessels, &c.

XI. And be it further enacted, That all Costs to be paid by the Plaintiff or Plaintiffs in any such Suit in a Court of Equity as aforesaid shall be taxed and settled as between Attorney and Client, if the Court shall think fit so to order. Costs to be taxed.

XII. Provided also, and be it further enacted, That if any such Bill shall be filed, and shall afterwards be dismissed by reason of any such Default of the Plaintiff or Plaintiffs therein as herein-before provided, or under any Order of the said Court for that Purpose, no new Bill shall be filed by the same Plaintiff or Plaintiffs, or his, her, or their Representatives, or by any other Part Owner or Part Owners of the same Ship or Vessel, unless the Court in which such Bill shall have been filed shall order such Dismissal to be without Prejudice to the filing of a new Bill, either absolutely or under such Conditions as to the said Court shall seem just. No new Bills to be filed but under certain Circumstances.

XIII. And be it further enacted, That if any Money shall be paid into any such Court of Equity as aforesaid, in respect of the Value of any such Ship or Vessel, Appurtenances, or Freight, all Interest and Profit made thereof while such Money shall remain in Court shall be considered as belonging to the Parties in such Suit, who shall appear to be entitled to the Principal Money or Proportions thereof respectively, and shall be divided and distributed accordingly; and if Security shall be given for such Value, or any Part thereof, the same shall bear Interest, and such Interest shall be applied in like Manner. Interest of Money paid into Court to belong to the Parties entitled to the Principal.

XIV. And be it further enacted, That if any such Bill shall be filed as aforesaid by any Part Owner or Part Owners of any Ship or Vessel, on Behalf of himself, herself, or themselves, and the other Part Owners, such Bill shall bind all such other Part Owners, and their Representatives, in the same Manner as they would have been bound if Parties Plaintiffs to such Bill; and if after the filing of any such Bill any of the Plaintiffs or other Part Owners shall die, the Right of Action against such Part Owners so dying, founded on any Tort or Wrong, shall not thereby be lost, but it shall and may be lawful to proceed against the respective Representatives of the Part Owners so dying, in the same Manner as might have been if such Right of Action had been founded on Contract. Any Bill filed by one Part Owner, to be equally binding on the others.

XV. And be it further enacted, That if any Suit for any such Loss or Damage as aforesaid shall be instituted or depending in any Court competent to act as a Court of Equity for the Purposes of this Act, such Court shall be and is hereby authorized and empowered to proceed in such Suit for such Purposes, in the same Manner, and under the same Regulations, and with the same Powers as are herein given to Courts of Equity, so far as the same are applicable to the Any Court competent to Act as Court of Equity, to be deemed as such for Purposes of Act.

No. 30. Nature of such Court, and the Forms of Proceedings therein, and such Court shall use all such Means as a Court of Equity is by this Act empowered to use for the Purposes of this Act.

Money paid for
to be accounted for.

XVI. And be it further enacted, That all and every Sum and Sum of Money which shall be paid for or towards or on account of any Loss or Damage, in respect whereof the Responsibility of the Owners of any Ship or Vessel is limited by this Act, or by the said Acts or either of them, or any Costs incurred in relation thereto, shall and may be brought into Account among the Part Owners of the same Ship or Vessel in such and the like Manner as Money disbursed for the Use thereof.

Public Act.

XVII. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken Notice of as such by all Judges, Justices, and other Persons whomsoever, without the same being specially pleaded.

No. 31.

54 George III. c. 158.—An Act to continue, for One Year, certain Acts for the better Prevention and Punishment of Attempts to seduce Persons serving in his Majesty's Forces by Sea or Land from their Duty and Allegiance to his Majesty, or to incite them to Mutiny or Disobedience. [29th July, 1814.]

[See Part VI., APPENDIX.]

No. 32.

54 George III. c. 159.—An Act for the better Regulation of the several Ports, Harbours, Roadsteads, Sounds, Channels, Bays and Navigable Rivers, in the United Kingdom; and of his Majesty's Docks, Dock Yards, Arsenals, Wharfs, Moorings and Stores therein; and for repealing several Acts passed for that Purpose

[29th July, 1814.]

No. 33.

55 George III. c. 116.—An Act to make further Regulations for the Registry of Ships built in India.

[28th June, 1815.]

PART III. CLASS III.

INSURANCE.

No. I.

43 Elizabeth, c. 12.—An Act concerning Matters of Assurances used among Merchants.

‘WHEREAS it ever hath been the Policy of this Realm by all good Means to comfort and encourage the Merchant, thereby to advance and increase the General Wealth of the Realm, her Majesty’s Customs, and the Strength of Shipping; which Consideration is now the more requisite, because Trade and Traffic is not at this present so open as at other Times it hath been: And whereas it hath been Time out of Mind an Usage amongst Merchants, both of this Realm and of foreign Nations, when they make any great Adventure, (especially into remote Parts) to give some Consideration of Money to other Persons (which commonly are in no small Number) to have from them Assurance made of their Goods, Merchandizes, Ships and Things adventured, or some Parts thereof, at such Rates and in such Sort as the Parties Assurers and the Parties Assured can agree, which Course of Dealing is commonly termed A Policy of Assurance; by Means of which Policies of Assurance it cometh to pass upon the Loss or perishing of any Ship, there followeth not the undoing of any Man, but the Loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than those that do adventure, whereby all Merchants, especially of the younger Sort, are allured to venture more willingly and more freely: And whereas heretofore such Assurers have used to stand so justly and precisely upon their Credits, as few or no Controversies have arisen thereupon, and if any have grown, the same have from Time to Time been ended and ordered by certain grave and discreet Merchants appointed by the Lord Mayor of the City of London, as Men by reason of their Experience fittest to understand, and speedily to decide those Causes, until of late Years that divers have withdrawn themselves from that arbitrary Course, and have sought to draw the Parties assured to seek their Monies of every several Assurer, by Suits commenced in her Majesty’s Courts, to their great Charges and Delays: For Remedy whereof, Be it enacted by the Authority of this present Parliament, That it shall and may be lawful for the Lord Chancellor, or Lord Keeper of the Great Seal of England, for the Time being, to award forth under the Great Seal of England, one general or standing Commission, to be renewed

43 Eliz c. 12.
The Benefit ensuing by the Encouragement of Merchants.
3 Inst. 160.
Sales, 166.

A Policy of Assurance, and the Benefit coming thereby

Commissioners awarded to hear and determine touching Policies of Assurance.

No. 1.
43 111. c. 12

Who shall be
Comm. insurers,
1 blow. 396.

yearly at the least, and otherwise so oft as unto the said Lord Chancellor or Lord Keeper shall seem good, for the hearing and determining of Causes arising and Policies of Assurances, such as now are or hereafter shall be entered within the Office of Assurances within the City of London, and whereof no Suit shall be depending the last Day of this Session of Parliament, in any of her Majesty's Courts: which Commission shall be directed to the Judge of the Admiralty for the Time being, the Recorder of London for the Time being, two Doctors of the Civil Law, and two Common Lawyers, and eight grave and discreet Merchants, or to any five of them: which Commissioners, or the greater Part of them, which shall sit and meet shall have by Virtue of this present Act full Power and Authority to hear, examine, order and decree all and every such Cause and Causes concerning Policies of Assurances in a brief and summary Course, as to their Discretion shall seem meet, without Formalities of Pleadings or Proceedings.

The Commission-
ers Authority

II. And be it further enacted by the Authority aforesaid, That it shall be lawful for the said Commissioners, as well to warn any of the Parties to come before them, as also to examine upon Oath any Witness that shall be produced, and to commit to prison without Bail or Mainprize, any Person that shall wilfully contemn or disobey their final Orders or Decrees. And that the said Commissioners shall once every Week at the least, meet and sit upon the Execution of the said Commission in the Office of Assurances, or in some other convenient publick Place by them to be assigned: And that no Person by Virtue of this Act may claim or exact any Fee, for any Matter or Cause concerning the Execution of the said Commission.

A Remedy for
the Party grieved
by the Commis-
sioners Decree.

III. And be it further enacted by the Authority aforesaid, That if any Person shall be grieved by Sentence or Decree of the said Commissioners, that such Persons so grieved may at any Time within two Months of the said Decree so made, exhibit his Bill into the High Court of Chancery for the Re-examination of such Decree; so as every Person Complainant, before he shall exhibit any such Bill, do either execute and satisfy the said Sentence so awarded, or at the least lay down in *deposito* with the said Commissioners such Sums of Money as he shall be awarded to pay, and that upon so doing the said Complainant shall be enlarged of his Imprisonment: And that the Lord Chancellor, or Lord Keeper, for the Time being, shall have full Power and Authority by Virtue of this Act, upon every Complaint made (in order as aforesaid) to reverse or affirm every such Sentence or Decree, according to Equity and Conscience: And that the said Lord Chancellor or Lord Keeper, in every such Suit brought before him, as aforesaid, by such Assurers, and decreed against the said Assurers, shall award double Costs to the Party assured.

No Assurer or As-
sured shall med-
dle in the Com-
mission

Every Commis-
sioner may sit,
having taken an
Oath before the
Lord Mayor.

IV. Provided nevertheless, That no Commissioner shall intermeddle in the Execution of any such Commission in any Cause or Matter of Assurance where himself shall be either a Party Assurer or Assured in the same Assurance which is brought in Question: Nor that any Commissioner (other than the said Judge of the Admiralty and the Recorder of London) shall deal or proceed in the Execution of any such Commission before he have taken his corporal Oath before the Lord Mayor and Court of Aldermen of the City of London, to proceed uprightly and indifferently between Party and Party.

No. 2.

13 & 14 Charles II. c. 23.—An Additional Act concerning Matter of Assurance used amongst Merchants.

WHEREAS by an Act of Parliament made in the Three and Fortieth Year of the Reign of Queen ELIZABETH, of happy Memory, intituled, *An Act concerning Matters of Assurances used amongst Merchants*; the Parliament then taking into Consideration, by all good Means to comfort and encourage the Merchants of this Kingdom, thereby to advance and increase the Wealth of this Realm, her Majesty's Customs, and the Strength of Shipping, and for preventing of divers Mischiefs in the said Act mentioned; it was enacted, That it should and might be lawful for the Lord Chancellor or Lord Keeper of the Great Seal of England for the Time being, to award forth, under the Great Seal of England, One general or standing Commission, to be renewed yearly at the least, and otherwise so often as unto the Lord Chancellor or Lord Keeper should seem meet, for the hearing and determining of Causes arising on Policies of Assurance, such as then were, or then after should be entered within the Office of Assurance of the City of London, which Commissions should be directed to the Judge of the Admiralty for the Time being, the Recorder of London for the Time being, Two Doctors of the Civil Law, Two common Lawyers, and Eight grave or discreet Merchants, or any Five of them; which Commissioners, or the greater Part of them which should sit and meet, should have full Power and Authority to hear, examine, order, and decree all and every such Cause or Causes in a brief and summary Course, without Formalities of Pleadings or Proceedings, with Power to warn Parties to come before them, and to examine upon Oath any Witnesses that should be produced, and to commit to Prison any Person that should wilfully disobey their final Orders and Decrees; and the Commissioners to sit Once Weekly upon the Execution of the said Commission, with a Liberty in the said Act for any Person grieved by any such Sentence or Decree, to exhibit his Bill in Chancery for the Re-examination of such Sentence or Decree, as by the said Act, Relation being thereunto had, more at large may appear: But forasmuch as by the said recited Act, without Five Commissioners there cannot be a Court, and without there be a Court they cannot proceed in the Execution of their Commission, so much as to summon Parties or Witnesses to appear; and in case of Neglect or Refusal of any Party or Witness to appear, they have no Power to punish the Delay or Contempt, with Costs, or otherwise; and it is provided by the said Act, That not any Commissioner, other than the Judge of the Admiralty, or the Recorder of London, shall proceed in the Execution of such Commission, before he hath taken his Oath before the Lord Mayor and Court of Aldermen to proceed uprightly and indifferently between Party and Party, which, upon the renewing of the said Commissions, often proves a great Delay, there being so many Commissioners to be sworn, and the Court of Aldermen not sitting at some Times in the Year when the said Commissions have happened to be renewed: And although the said Commissioners, upon their final Sentence, have Power to commit to Prison any Person that shall wilfully disobey their said Sentences or Decrees, yet they have no Power to make any Order against the Ship or Goods, which commonly are the Things assured; by which Omissions, for want of Power given by the said Act, the Benefits intended by the said Act of Parliament are much retarded,

13 & 14 Car II.
c. 23.
45 Elis c. 12.

Encouragement
of Merchants and
Trade.

No. 2.
13 & 14 Car. II.
c. 23.

Three Commis-
sioners impow-
ered to act.

1 Shower, 396.

Costs.

Lord Mayor of
London may ad-
minister the Oath.

Commissions out
of the Admiralty
Court to examine
Witnesses beyond
Sea.

Witnesses going
to Sea how to be
examined before.

‘and the Mischiefs by the Act endeavoured to be prevented, much increased.’

II. For Remedy whereof, be it enacted and ordained, and it is hereby enacted and ordained by the King's most Excellent Majesty, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, That from and after the Four and Twentieth Day of June, which shall be in the Year of our Lord One Thousand Six Hundred Sixty and Two, it shall and may be lawful to and for the Lord Chancellor or Lord Keeper of the Great Seal of England for the Time being, to issue out yearly (or oftener if Need require) One standing Commission under the Great Seal of England, thereby empowering and authorizing the said Commissioners, or any Three of them (whereof a Doctor of the Civil Law, or a Barrister at Law of Five Years standing at the least, to be always One), to meet and sit, and make a Court, and proceed in all Things in the Execution of the said Commission, as before by the said Act any Five might have done; and that the said Commissioners, or any such Three of them, as aforesaid, be and hereby are empowered to summon Parties and Witnesses to appear; and in case of Contempt or wilful Delay in the Witnesses upon the First Summons and Tender of reasonable Charges, and in the Parties upon their Second Summons, to punish the Offenders by Imprisonment or Costs for such Time and in such Manner as shall be reasonable, and according to the Nature and Quality of their Offences; and that it shall and may be lawful to and for every such Commissioner to proceed in the Execution of the said Commission, having first taken an Oath before the Lord Mayor of the City of London for the Time being only, to proceed uprightly and indifferently between Party and Party; and the said Lord Mayor is hereby authorized to give such Oath; any Thing in the said Act to the contrary notwithstanding. And that no Person shall proceed in Execution of the said Commission, before he be first sworn before the Lord Mayor of London for the Time being, to proceed uprightly and indifferently between Party and Party, as formerly he should have been before the Lord Mayor and Court of Aldermen.

III. Be it also enacted by the Authority aforesaid, That in case the said Commissioners, or any such Three of them as aforesaid, shall find Cause to examine Witnesses beyond the Seas, or any remote Parts of his Majesty's Dominions, for the clearing of any Doubt or Matter before them depending, that in such Case, by Direction of the said Commissioners, or any such Three of them, like Commissions or Process shall issue out of the Court of Admiralty, as have formerly been for the Purposes aforesaid, returnable before the said Commissioners; and that the said Commissioners, or any such Three of them, shall have also Power to give and pass their final Sentence, Decree, and Executions, as well against the Body of the Party evicted; or his Goods, as also against the Executors and Administrators of such Party so evicted; and to assess Costs of Suit upon such Person or Persons as shall be condemned by the Decree of the said Court, as to them shall seem just.

IV. And forasmuch as many Witnesses (as Seamen and others) come and speedily go again to Sea, before a Court can be summoned, by which means the Assured and Assurers are many Times much damaged; for the preventing of which Mischief, be it also enacted by the Authority aforesaid, That it shall and may be lawful to and for any One of the said Commissioners to administer an Oath to any Witness legally summoned to give Testimony, (timely Notice being thereof given to the adverse Party, and set up in the Office before such Examination), to the End of such Witness or Witnesses may be cross-examined.

V. Provided always, That the said Commissioners shall in no Case proceed both against Person and Goods for One and the same Debt; and provided also, That any Thing in this Act contained shall not in any wise extend to prejudice the Appeal to the High Court of Chancery given or allowed in the said former Act of Parliament.*

No. 2
13 & 14 Car. II.
c. 4.
Appeal to the
Chancery
43 Eliz. c. 12.

* The following Observations are made by Mr. Justice Park, on the Court, which is the Subject of this and the preceding Number, in his valuable Treatise on the Law of Insurance. Speaking of the Statute of Elizabeth, he says, that "The Purpose of that Statute was, to erect a particular Court for the Trial of Causes, relative to Policies of Insurance, in a summary Way; and to that end the Statute ordained, that a Commission should issue yearly, directed to the Judge of the Admiralty, the Recorder of London, two Doctors of the Civil Law, two common Lawyers, and eight Merchants, empowering any five of them to hear and determine all such Causes, arising in London; and it also gave an Appeal from their Decision, by Way of Bill, to the Court of Chancery. But this Statute not entirely answering the Intention of the Legislature, some further Regulations were made by a subsequent Statute: such as the Reduction of the Number necessary to constitute a Quorum. I forbear entering at length into this Matter, the Court created by these Statutes being now entirely disused. The Reasons of this may be collected from some few Decisions in our Reports: but one appears on the Face of the Statute itself, namely; that its Jurisdiction was not sufficiently extensive, being confined to such Causes only, as arose in London.

"By a Case reported in *Crabbe v. Crabbe*, that a Prohibition issued to the Court of Policies of Insurance, to prevent it from Proceeding in a Case of Insurance upon a Life, the Court of King's Bench being of Opinion, that the Statute only meant to give the Court below Cognizance of such Contracts only, as related to *Merchandise*.

"In another Case it seemed to be the Opinion of the Court of King's Bench, that the Jurisdiction of this newly erected Court did not extend to Suits brought by the Assured against the Assured; but only to such as were prosecuted by the latter against the former. It is true, in *Sir Bartholomew Shower's Note* of the Case, no Decision appears to have been made; but a Rule to shew Cause why a Prohibition should not issue was obtained; and no Notice is afterwards taken of it, although the learned Reporter was himself the Counsel in the Cause, who had obtained the original Rule.

"But a Case reported in *Siderfin*, seems to have struck a more severe blow at the Existence of this Court than any of these Cases I have mentioned; for it was there held, that it was no Bar to an Action upon a Policy of Insurance at the Common Law to say, that the Plaintiff had sued the Defendant for the same Cause, in the Court erected by the Statute of Elizabeth, and that his Suit was there dismissed.

"These Causes co-operating, together probably with some Instances of Partiality in the Judges, this Court fell into Disuse, no Commission having issued for many Years; but Insurance Cases are now decided, like all other Questions of Property, and by that Mode of Trial most agreeable to the Nature of our Constitution, by a Trial in a Court of Common Law.

"It has been much the Fashion of late Years to insist upon the Advantages which the trading Part of the Nation would derive from the Establishment of some equitable and amiable Judiciary for the Trial of all disputed Points in Matters of Insurance. This is only another Proof of the Weakness and Fallibility of the human Mind, which is never satisfied with Things within its reach, however excellent they may be; but pants after those of foreign Growth. Thus, a People who are possessed of a Species of Trial, the best calculated for the Discovery of Truth, and the Advancement of Justice, and which has excited the Admiration of the World, are desirous of parting with such an Advantage for a Mode of Trial which is very unsatisfactory.

"The Court erected by the Statute of Elizabeth, and which has now fallen into Disuse, is perhaps one of the strongest arguments that can be adduced to prove, that such a Judicature is not congenial to the Spirit and Disposition of Britons, nor well adapted for the Purposes of its Institution. It is universally agreed by all Writers upon Jurisprudence, that Nothing tends so much to the Elucidation of Truth, and the Detection of Fraud, as the open *viva voce* Examination of Witnesses, in the Presence of all Mankind; before

No. 2.
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c. 23.

Judges, who from their Knowledge of Books and Men, acquired by long Study and Experience, are well qualified to discriminate and decide between Right and Wrong; and before twelve upright Citizens, who have an Opportunity of observing the Appearance, Countenance, Inclination, and Deportment of those, who are thus examined upon Oath. Besides the Subjects of those States, which have established these equitable Tribunals, sensible of the superior Advantages of the English Institution, feeling that in great mercantile Questions, the greatest Attention is paid to the eternal and immutable Principles of Reason, and that all Men, whether Natives or Foreigners, here meet with an equal Measure in the Administration of Justice, fly to this Country to make their Contracts of Insurance, that in case of a Dispute, they may have the Benefit of its Laws."

Fully concurring with the learned Writer, in his Veneration of the Justice and Wisdom of the existing Law, I entertain a very different Impression with respect to the Benefit of reviving, under proper Modifications, an Institution similar in its Principles to that which is the Subject of his Animadversions. Unquestionable and unquestioned as the Rectitude and Justice of the Decisions of our existing Tribunals assuredly are, it cannot be denied, that in the previous Machinery of Litigation, there is a very great Opportunity for the Operation of Chicanery and Vexation; and although, doubtless, the great Bulk of the Transactions upon Policies of Insurance, like the great Body of all the other Intercourse of Society, passes *sub silentio*, and according to the ordinary Principles of Rectitude and Propriety, there is no Class of Cases, and I shall have occasion, more than once, to touch upon the Observation, that comes under the public Examination of Courts of Judicature, from which alone I derive my Knowledge of the Subject, that presents so many Instances of Contest, in Opposition to the plain and manifest Dictates of common Integrity—or that could justify, to so great a Degree, the Kind of Animadversion with which, in the Statute of Elizabeth, the Subject is introduced.

The Advantage possessed by the Assurers, of defending the Claim against them, collectively, or individually, is, in the Hands of Persons acting with fraudulent Intentions, a powerful Weapon of Oppression; and as such, I conceive, is not unfrequently made use of.

That the Settlement of general Questions of Law is most advantageously referred to the public Tribunals of the Country—and that the Decision of disputed Questions of Fact is best referred to an open Examination, before an impartial Jury, are Propositions to which I unreservedly accede; but a Party, in resisting a fair Demand, has a great Opportunity of harassing his Opponent, by requiring the strict and technical Proof of Circumstances, the Existence of which is not susceptible of any real Controversy, and the insisting upon a formal Proof of which is of no other Service than that of Intimidation on Account of the Expence—and supposing the Tribunal in Question to be again resorted to, the beneficial Objects of the Institution would be best accomplished by a Course of Procedure, upon which specific Issues might be directed for the Trial of any fairly disputed Facts, and Statements of the Case might be submitted to the Judgment of the regular Tribunals of the Country, upon any disputed Question of Law, with suitable Provisions for making the Determination subject to Revision upon Appeal, as effectually as can be done according to the existing Course and Practice of the Law, and which is abundantly exemplified by the present Course of Appeal from the Decisions of Courts of Equity, and the Courts of Scotland.

The Powers which may be given to a Tribunal, constituted as the ancient Court of Policies of Assurance was, to give specific Directions operating *in rem*, to institute Inquiries under a proper Superintendence upon Matters, the Elucidation of which may be material to attain the proper Justice of the Case, and to make a general Arrangement between conflicting Parties upon Questions of Average and Contribution would afford Advantages to such a Tribunal, to which there is nothing analogous in the ordinary Course of legal Proceedings. The Inadequacy of the existing Law to settle *proprio vigore* complicated Questions of Average and Contribution is very manifest and notorious. Such Questions are by consent a Matter of course, and from Conviction of Counsel that Justice cannot be attained in any other way, referred to private Examination; but a Law can hardly be considered as perfect which is not possessed of adequate Powers within itself to complete its Purpose, and which requires the extrinsic Aid of personal Counsel,

Although these Observations refer to a Course of Procedure which has been long obsolete, there is nothing in the Principle of the Measure which can be regarded as rash or experimental. The Powers exercised by Commissioners, under local Acts and Acts of Revenue, are as great and extensive as any judicial Power, which it would be convenient to refer in a Court to be instituted or revived for the Purposes alluded to. The Judicature exercised by the Lord Chancellor in Bankruptcy, (wherein the Facts, which are the Subject of Enquiry, are primarily examined upon Affidavit, and the Questions, the Nature of which may render it expedient, are referred to the Decision of a Jury upon the Fact, or to the Opinion of one of the ordinary Courts upon a Point of Law, while other Matters are, with greater Convenience, referred to the Officers of the Court, or Commissioners,) may supply every thing which can be considered in Point of Model or Principle, and probably embrace a Mass of Property not much inferior in amount to the whole of the Property connected with commercial Transaction, which is brought under Examination before the Courts of Law.

Amongst the Causes which may have been most essential in producing the Decline of the Court referred to, there is one not noticed in the preceding Extract, which may probably have had a greater Effect than those enumerated—the Want of Compensation to the Persons to whom the Authority is entrusted; and the Observation is not made indifferently, but with the Conviction, that in very few Instances gratuitous Services can be relied upon, or reasonably expected upon a great and extensive Scale; and that the most effectual Mode of obtaining a desirable Object, is to connect with it such a Compensation as may afford an adequate Inducement for the Exertions of those who would be most beneficially interested in its Accomplishment.

The preceding Observations, considering the existing State of public Opinion, may, I am aware, be regarded as purely speculative; but when I recollect the great Increase which, within the Time of my own Memory, has taken place in the Matters of Inquiry submitted to Courts of Justice, and the Number of Arrangements and Expedients which have been resorted to for Dispatch of it, and contemplate the Probability of a similar Increase with the further Progress of Population and national Wealth, I anticipate, as a Consequence, the Arrival of a Period when it will be beyond the Power of mere Arrangement, with all possible Exertion of Assiduity and Ability, to meet the Exigencies of public Justice with the existing judicial Establishment, and when there must be either that general Confusion and Delay, than which nothing could be more extensively detrimental, or an Alteration of System calculated to meet the increased Demand for judicial Labour, with an adequate Addition of Supply; and perhaps when the Time arrives that the Necessity of resorting to such Expedients shall force itself upon the Attention, the revival of the Court of Police of Assurance may be found an Object not entirely unworthy of

No. 2.

13 & 14 Cap. II.
c. 23.

No. 3.

6 George I. c. 18.—An Act for better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned.

19.

MOST GRACIOUS SOVEREIGN; Whereas it hath for many Ages past been esteemed good Policy, by all proper Ways and Means, to secure and encourage the Trade of this Realm, whereby the Wealth and Strength of the same, and particularly the Shipping, Navigation and publick Revenues thereby, have been increased; and it hath been, Time out of Mind, a Custom or Usage amongst Merchants, as well of this Realm as of foreign Nations, when they make any Adventures

6 Geo. I. c. 18.

By 14 Geo. II.
c. 37, this Act is
extended to Ame-
rica.

No. 3.
6 Geo. 1. c. 18.

43 Eliz. c. 19.
13 & 14 Car. 2.

at Sea (especially into remote or dangerous Parts) to give a Premium, or Consideration to particular Persons, to have from such particular Persons Assurance of or upon Ships, Goods or Merchandizes adventure, or some of them, at such Rates or Prices as the Parties Assurers and the Parties assured can agree, which Kind of Contract or Dealing is commonly called a Policy of Assurance, and several Laws and Statutes now in Force have been made concerning the same Assurances; notwithstanding which it is found by Experience, That many particular Persons, after they have received large Premiums or Consideration-Monies for or towards the insuring Ships, Goods and Merchandizes at Sea, have become Bankrupts, or otherwise failed in answering or complying with their Policies of Assurance, whereby they were particularly engaged to make good or contribute towards the Losses which Merchants or Traders have sustained, to the Ruin or Impoverishment of many Merchants and Traders, and to the Disencouragement of Adventurers at Sea, and to the great Diminution of the Trade, Wealth, Strength and publick Revenues of this Kingdom: And whereas it is conceived, That if two several and distinct Corporations, with a competent Joint Stock to each of them belonging, and under proper Conditions, Restrictions and Regulations, were erected and established for Assurance of Ships, Goods or Merchandizes at Sea, or going to Sea (exclusive of all or any other Corporations or Bodies Politick already created, or hereafter to be created, and likewise exclusive of such Societies or Partnerships as now are or may hereafter be entred into for that Purpose) several Merchants or Traders, who adventure with Ships, or Part of their Estates in such Ships, Goods or Merchandizes at Sea, or going to Sea, (especially in remote or hazardous Voyages) would think it much safer for them to depend on the Policies or Assurances of either of these two Corporations so to be erected and established, than on the Policies or Assurances of private or particular Persons; and that such Merchants or Adventurers as shall hereafter be induced to agree for Assurance of their Ships, Goods or Merchandizes with private or particular Persons, may still be at Liberty so to do according to their own Option or Choice: And whereas it has been the Custom or Usage in this as well as in other Nations, for Merchants or Traders, who adventure their Ships and Merchandizes at Sea, to borrow Money to be repaid upon the Return or Arrival of such Ships, which Kind of borrowing is commonly called, being or taking on Bottomry; in which Cases the Lenders run a Risque or Hazard, more or less, of losing their Principal, and are therefore allowed to contract for such Interest or Consideration-Money for the Use or Forbearance of the Principal, as can be agreed upon between the Borrowers and the Lenders; and it is considered, That it may be of great Advantage and Encouragement to Trade and Navigation, if such Merchants and Traders might have it in their Power, at their own Election, either to have recourse to one of the Corporations to be erected and established in pursuance of this Act, or to private or particular Persons for borrowing Money upon Bottomry as aforesaid, at such Rate or Rates as shall be agreed upon between such Borrowers and Lenders respectively: And whereas the sole Right and Prerogative of granting Charters of Incorporation (and being such as are repugnant to any Law or Statute of this Realm) doth belong to your Majesty: and it is considered, That if your Majesty shall be graciously pleased to grant two such distinct Charters as aforesaid, the Members of each Corporation so to be erected and established (as and in Consideration of the Advantages which may accrue to them respectively thereby, and for having reasonable Powers and Privileges secured to them in pursuance of this Act) may be willing to pay to your Majesty's Use such Sums of

'Money, at such Times, and by such Proportions, as are herein after mentioned:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful to and for his Majesty, by one Charter or Indenture under the Great Seal of Great Britain, to declare and grant, That such and so many Persons (who shall be named therein, and of whose Abilities and Fitness his Majesty shall thereby declare himself to be well satisfied) and all and every such other Person and Persons as hereafter from Time to Time shall be duly admitted as Members into their Corporation, shall be one distinct and separate Body Politick and Corporate for the Assurance of Ships, Goods and Merchandizes at Sea; or going to Sea, and for lending Money upon Bottomry, by such Name as his Majesty shall think most proper: And that it shall and may be lawful to and for his Majesty, by another Charter or Indenture under the Great Seal of Great Britain, to declare and grant, That such and so many other Persons (who shall be named therein, and of whose Abilities and Fitness his Majesty shall thereby declare himself to be well satisfied) and all and every such other Person and Persons as hereafter from Time to Time shall be duly admitted as Members into their Corporation, shall be one other distinct and separate Body Politick and Corporate for Assurance of Ships, Goods and Merchandizes at Sea, or going to Sea, and for lending Money upon Bottomry, by such Name as his Majesty shall think most proper: And that the said several and respective Corporations, by their respective Names aforesaid, shall have perpetual Succession, and notwithstanding to such Redemption or Power of Revocation as hereafter in this Act is provided concerning the same.

[They may choose their own Governours, &c. The first Governour, &c. to be appointed by his Majesty. To continue in their Places for three Years, &c. To have a Dominion Sea. May purchase Lands to the Value of 1000^l per Annum. May sue to be sued.]

II. [Each of the Corporations to pay into the Exchequer 300,000^l. for discharging the Debt of the Civil List. 7 Geo. 1. c. 27, sec. 26. Times of payment.]

III. [On Failure of Payment at the Times of Payment, Corporation may be sued. Ten per Cent. Damages with full Costs of Suit. On Non-payment for thirty Days, Corporation may be determined.]

IV. [Each Corporation to provide a sufficient Surety to answer all Demands on their Politicks. On the contrary be sued, &c. For Pleas in such Actions, 11 Geo. 1. c. 24, sec. 10. Altered as to double Damages by 8 Geo. 1. c. 15, sec. 45.]

V. [Each Corporation to raise a Capital Stock not exceeding 1,500,000^l.]

VI. [All Subscribers entitled to a Share in the Capital Stock.]

VII. [Corporation may make use of Money from their Members in Proportion to their Stocks. Penalties for not answering to Calls.]

VIII. [Each Corporation may take up Money under their Common Seal, to advance Money on Parliamentary Securities. Not chargeable with the Stamp Duty.]

IX. [Shares in the Corporations transferrable and devisable. Stock a personal Estate, and to go to Executors.]

X. [Stock not to be taxed. Governours, &c. may be Members of Parliament, &c.]

XI. [His Majesty may empower them by Charter to make By-Laws, &c.]

XII. And be it further enacted by the Authority aforesaid, That from and after the granting or making of the said respective Charters

No. 3.

6 Geo. 1. c. 18.

His Majesty may grant Charters to two distinct Companies for Assurance of Ships, and for lending Money on Bottomry,

to have perpetual Succession, but subject to Redemption.

No. 3.
6 Geo. I. c. 18.

During the two Corporations no other Societies may assure Ships or load Money on Bottomry.

Penalty for Corporations assuring.

or Indentures for erecting the two Corporations before-mentioned, and passing the same under the Great Seal, for and during the Continuance of the same Corporations respectively, or either of them, all other Corporations or Bodies Politick, before this Time erected or established, or hereafter to be erected or established, whether such Corporations or Bodies Politick, or any of them, be sole or aggregate, and all such Societies and Partnerships as now are, or hereafter shall or may be entered into by any Person or Persons, for assuring Ships or Merchandizes at Sea, or for lending Money upon Bottomry, shall by Force and Virtue of this Act be restrained from granting, signing or under-writing any Policy or Policies of Assurance, or making any Contracts for Assurance of or upon any Ship or Ships, Goods or Merchandizes at Sea or going to Sea, and from lending any Money by way of Bottomry, as aforesaid; and if any Corporation or Body Politick, or Persons acting in such Society or Partnership, other than the two Corporations intended to be established by this Act, or one of them, shall presume to grant, sign or under-write, after the four and twentieth Day of June one thousand seven hundred and twenty, any such Policy or Policies, or make any such Contract or Contracts for Assurance of or upon any Ship or Ships, Goods or Merchandizes at Sea or going to Sea, or take or agree to take any Premium or other Sum or Sums for such Policy or Policies, every such Policy and Contract of Assurance of or upon any such Ship or Ships, Goods or Merchandizes, shall be *ipso facto* void, (1)

(1) In *Case v. Smith*, 7 T. R. 535, where several Persons mutually agreed to insure the Vessel of each other, and there was a Clause, that in Case any of them should become insolvent, the others should be answerable for his Proportion, the former Security was held to constitute a Partnership, and to bring the Agreement within the Reach of the Prohibition. I doubt whether the reasoning, in this Case, was altogether correct; for although a joint and mutual Liability necessarily attached upon, and results from a Co-partnership; it does not follow that necessarily constitutes one; or, that as there can be no Partnership without a joint Responsibility, there can be no joint Responsibility without a Partnership. Upon the Case in Question, it would not have been sufficient, to bring the Statute out of the Question, to have used a Contributor, as a Partner primarily liable in respect of the original Engagement; but would have been essentially requisite to have proceeded upon the special Contract, with an express Agreement of the Insolvency of the particular Insurer, for whose Default the others were respectively liable to contribute.

In *Cockburn v. Thompson*, 10 Ves. 345, it was said by Lord Eldon, *arguendo*, that very Number of Persons may be liable for the Insurance of each other; all in effect participating in a Partnership. Where a Partnership was entered into, in contravention of this Statute, it was ruled; that one of the Partners had no Claim upon the others, for a Proportion of the Losses which he had paid. — *Mitchell v. Cockburn*, 2 M. Black. 379. Where three Persons were in Partnership, and the Policy was in the Name of one of them, and another, together with a Partner of his own, in which Partnership there is no legal Objection, were the Brokers, the Assurance of the Person whose Name was used, was not allowed to be taken from them Brokers the Premiums received. — *Booth v. Hodgson*, 3 T. R. 505. It had been previously held, by Lord Kenyon, at *West Price*, that an Underwriter, who had paid a Loss, could not recover from the Broker the Money which the Broker had received from another Person, who had agreed to take Hall the Plaintiff's Rique — his Lordship saying, that a Party could not appeal in a Court of Justice to enforce a Contract founded upon a Breach of the Law — *Sullivan v. Greaves*, Park, 8; but it has been since ruled, by the Court of Common Pleas, that a Broker, to whom the Underwriter had paid the Loss, on an illegal Policy, could not resist paying it over to the Assured — and they even refused to grant a Rule to shew cause why there should not be a new Trial; which Decision certainly cannot, in Principle, be reconciled to that before Lord Kenyon. These Cases had occurred previously to the Appearance of a small Treatise on Insurance, which I published in the Year 1801; in which I submitted some Observations

and all and every Sum or Sums so signed or underwritten in such Policy or Policies shall be forfeited, and shall and may be recovered, to wit, One Moiety thereof to the Use of his Majesty, his Heirs and

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6 Geo. I. c. 18.

on the Correctness of the Principles which were adopted in *Booth and Hodgson*, and *Sullivan and Greaves*. The Observations were afterwards ingrafted into a general Discussion on the Illegality of Contracts, which I introduced into the Appendix to the Translation of *Pothier*—and which I have thought it eligible to add to the present Work, (see Appendix, No. 1.)

In *Aubert v. Maze*, 2 Bos. & Pal. 371, an Award that the Defendant should pay the Plaintiff a certain Sum, being a Moiety of divers Sums of Money paid by the Defendant, on account of Policies underwritten at their joint Risk, was set aside. This Decision appears fully to accord with what I apprehend to be the true legal Principles upon the Subject—there being no other Obligation subsisting between the Parties than the illegal Contract of Partnership. But in the Discussion of the Case many Sentiments were advanced in contradiction of those, which I have repeatedly endeavoured to maintain, as illustrated by the great Cases of *Falkner v. Reynolds*, and *Petrie v. Hannay*, with regard to the collateral Extension of the Consequences of illegal Contracts, as to which see the Number of the Appendix above referred to. Lord Eldon said, that if the Principle of these Cases was to be supported, the Act of Parliament would be of very little Use—meaning, of course, “*Effect and Operation*,”—for as to the real Use of the Act of Parliament, except by way of Sale of a Monopoly to the Insurance Companies, it would perhaps be rather difficult to discover in what Circumstance it can be found. But maintaining, as steadily as any Man, the Propriety of a strict Conformity to the Authority of the Legislature, even upon Subjects where I should not be disposed to join in Admission of its Wisdom, I think that the Consequence supposed would by no Means follow—If, as in the Cases of *Falkner v. Reynolds*, and *Petrie v. Hannay*, the Party protected from Payment by Means of the Illegality of his Interest, and who had subsequently proceeded upon another Person to advance his Money in execution of it, is merely held bound by such subsequent Act. The joint Object of the Act was, to secure the Companies from the Competition of other Bodies placing the Responsibility of a common Fund. Such Competition is completely and effectually excluded, to all legal Purposes, by the mere Operation of the Act, whereby any such Insurance is absolutely void, and any Partnership founded in Controversy of the Prohibition can produce no legal Obligation. The Decisions in *Falkner v. Reynolds*, and *Petrie v. Hannay*, do not in the slightest Degree controvert that Principle, and only acknowledge the Subsistence of an Obligation arising from the subsequent Act, occurring at a Time when no illegal Object is in Contemplation, whereby a third Person is induced to advance his Property—upon the Request and Promise of the Party intended to be charged—and is prevented from Loss—by precluding the Defendant from alleging, that he was not liable at the Time of the Advance to pay the Demand, in Satisfaction of which he had requested such Property to be applied—it being admitted by those who are most strenuous in denying such Obligation, that if the Defendant had received the Money upon a Loan to himself, with the acknowledged View of applying it to such a Purpose, it would have been an obligatory Contract; and that the only Difference is between the Circuity of the Money being borrowed by and handed to A, and by him paid over to B, and its being paid to B in the first Instance, without its passing through the Hands of A.

In *Brunton v. Talbot*, 4 Term R. 500, an Action for Premiums of Insurance, the Defendant proved an Agreement between the Plaintiff and third Persons, that the Profits upon the Policies underwritten by the Plaintiff should be divided between them—whereupon the Plaintiff was non-suited. Upon an Application to set aside the Nonsuit, *Manfield, C. J.* said, “The Law says, that no Persons, acting in Partnership, shall promise to underwrite any Policy for insuring Ships or Merchandize at Sea, but that every such Policy shall be *ipso facto* void. How then can an Action be maintained to recover these Premiums? The Statute would be mere waste Paper, if one of several Partners might underwrite a Policy for the rest”—and “the other Judges concurring, the Plaintiff took Nothing by his Motion.” If the Defendant, at the Time of effecting the Policy, understood and knew that it was on the joint Account of the Plaintiff and the Person with whom he was engaged in an illegal Partnership,—this Clause is the mere Result of the clear and undisputed

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6 Geo. 1. c. 18.

Successors, and the other Moiety thereof to the Use of such Person or Persons as will inform or sue for the same, in any of his Majesty's Courts of Record at Westminster, in which Action, Suit or Informa-

Rules of Law,—the Policy would have been void—the Defendant could have recovered Nothing in Case of Loss—the Plaintiff would have had no legal Pretext to demand the Premiums. But that Fact does not appear, and is not made an Ingredient in the Case. Mr. Selwyn, in referring to the Cases of *Mitchell v. Cockburne*, *Sullivan v. Greaves*, and *Booth v. Hodgson*, says, that it appears to have been the Opinion of two eminent Judges, (Eyre, C. J. and Lord Kenyon,) in those Cases, that when a single Name appears upon the Policy, the Insurer will not be allowed, if a Loss happening to defeat a *bona fide* Insurante, by alleging to an innocent Person that there was a secret Partnership between himself and another. To be sure, it would be the Height of Injustice if the Law were otherwise—and the fair Question upon the Statement of *Brunton v. Todd* is, whether one of these Innocents, who would have had a legal Claim to Indemnity in Case of Loss, was justified, (not in common Honesty, for that, in these Matters is out of the Question, but in Point of Law,) to refuse paying the stipulated Price for an Engagement which the Law would have enabled him to support. The Foundation of the Judgment is that the Policy was void, but according to the Dicta referred to, it was not void; and the Policy of the Law might have been abundantly satisfied, by holding that there was a legal Contract, giving a legal Claim for the Payment of the Premiums, and leaving the illegal and collateral Contract of Partnership to the Conscience of the Court.

In *Watts v. Brooks*, 3 Ves. 618, there had been a Contract of Partnership in Insurance, between the Plaintiff and Defendant, as well upon Ships and Cargoes as upon Lives; and upon a general Bill for an Account, the Lord Chancellor (Lord Kenyon) said, that though he was of Opinion that the Judgment of the Court of King's Bench, in *Booth and Hodgson*, was right, it went no farther than that the Court would not enforce those Contracts; but where the Parties had had Dealings together upon a Variety of Transactions, and Losses had been incurred and paid, and a general Account was sought, he did not execute the Contract against Law; but he should do Injustice if he did not give the Advantage of the Advantage had arisen, to charge any Loss which had happened, upon the Partnership Business, and they had been settling Profit and Loss upon the same Transactions, he should do great Injustice if he did not bring them into Account. So upon Stock Transactions, though the Court would not execute the Contract, yet where the Parties had been settling Stock Dealings, and Paying Differences, he must bring these into Account. Lord Ellenborough, in *Edgar v. Fowler*, says, with Reference to the preceding Case of *Watts v. Brooks*, that it may be observed, that it is possible that where Parties have settled the Balance of a mixed Account between them, of long standing, and one Party has had an Advantage for many Years of Credit being given to him for certain Sums, the Court of Equity may feel itself called upon to open the whole Account, if the Party, who has already taken Credit for those Sums, should think proper to object to an Account being taken of the Balance. This is a principle which is not confined to a Case in which it

was drily decided, that a Master, in the Course of taking an Account, found certain Sums paid on Account of any of these illegal Transactions, he may, on the Ground of Consent to such Payments, view them in the same Light as the other Items of the Account. It did not appear to him, that the Case proceeded upon a Principle sufficiently consistent with the Act of Parliament to justify the adoption of it. And in *Knowles v. Houghton*, 11 Ves. 168, an Account of Partnership Transactions, so far as related to Insurance, was refused; and the Master of the Rolls said, he had always found it difficult to reconcile the Distinction, in *Watts v. Brooks*, to his Mind.

If the Consent, which is referred to in the above Observations, is merely the general Consent resulting from the illicit Partnership, I think it will be impossible to contest with any Success the legal Principles, the Justice of the Observations respecting it. But if there is an express and immediate subsequent Consent to take such Payments into Account, the Questions will, perhaps, in some degree, depend upon the Adoption or Rejection of the great Principle in *Falkner v. Reynolds*—although, in *Edgar v. Fowler*, 3 East. 222, it was held, that the mere Statement of an Account was not equivalent to the Payment of the Money, so as to give Effect to an illegal Contract.

tion, no Essoin, Protection, Privilege, Wager of Law, or more than one Imparance shall be granted or allowed: And if any Corporation or Body Politick, or Persons acting in such Society or Partnership, as aforesaid, other than the two Corporations intended to be established by this Act, or one of them, shall presume to lend, or advance, by themselves, or any others on their Behalf, after the said four and twentieth Day of June one thousand seven hundred and twenty, any Money by way of Bottomry, as aforesaid, contrary to this Act, the Bond or other Security for the same shall be *ipso facto* void, and such Agreement shall be adjudged to be an usurious Contract, and the Offenders therein shall suffer as in Cases of Usury: Nevertheless it is intended and hereby declared, That any private or particular Person or Persons shall be at Liberty to write or underwrite any Policies, or engage himself or herself in any Assurances of, for or upon any Ship or Ships, Goods or Merchandizes at Sea or going to Sea, or may lend Money by way of Bottomry, as aforesaid, as fully and beneficially as if this Act had never been made, so as the same be not upon the Account or Risque of a Corporation or Body Politick, or upon the Account or Risque of Persons acting in a Society or Partnership for that Purpose, as aforesaid; any Thing herein contained to the contrary notwithstanding.

XIII. [Forging the Common Seal of the Corporations, or any Policv, &c Felony without Benefit of Clergy.]

XIV. [None may be Governor, &c. of both the Corporations at the same Time, or purchase Stock in both Corporations. Penalty.]

XV. [On three Years Notice at any Time within 30 Years, on Payment of the 300,000*l.* the Corporations may be determined by Parliament.]

XVI. [After 81 Years, if the Corporations are judged inconvenient, his Majesty may determine them.]

XVII. Nevertheless it is intended and hereby declared and enacted, That in Case the said Corporations shall be redeemed upon such Notice and Payment, within the said Term of thirty-one Years, or be revoked by such Letters Patent, as aforesaid, after the said Term of thirty-one Years, the same Corporations, or any Corporation or Corporations, with like Powers, Privileges, Benefits and Advantages, shall not be grantable again to any Person or Corporations whatsoever, but shall remain suppressed for ever, as having been found inconvenient and prejudicial to the Publick.

No. 3.
6 Geo. I. c. 18.
Penalty for lending Money on Bottomry.

But any private Persons may assure, &c.

No other like Corporations grantable.

(2) Having in a preceding Note observed to the Cases decided with respect to the Construction of the Clause relating to chartered Companies the exclusive Privilege of issuing by a common Fund, I shall here take the Liberty of expressing the Sentiment which I have long entertained, that few Provisions in the Statute Book are attended with more injurious and detrimental Consequences, with relation to the Subject to which they are applied, than the present. It is not probable, that at the present Times any such Views of public Policy, as are expressed in the Principles of the Statute, would have much Influence in Opposition to the known Advantages of Freedom of Competition; and it is manifest, that even at the Time of passing the Act, the Assistance rendered to the Civil List was an Argument of much greater efficacy than the Expectation of any beneficial Consequences to the Public from the Nature of the Regulation; but in the general State of Alarm and Confusion, arising from the Bursting of the South Sea Bubble, Questions of general Policy were not likely to be examined with a very calm and settled Attention, and from the pernicious Consequences that had resulted from an excessive Confidence in bold and impudent Projects, an Error on the Side of excessive Caution would not be scrutinized with much Severity.

To the Right acquired by Law in the existing Companies, that sacred Respect is due which should prevent the slightest Incroachment for the Sake of a general Benefit to the Public, without affording a full and liberal Compen-

No. 3.
6 Geo. L. c. 18.

XVIII. And whereas it is notorious, that several Undertakings or Projects of different Kinds have, at some Time or Times since the four and twentieth Day of June one thousand seven hundred and eighteen, been publickly contrived and practised, or attempted to be practised, within the City of London, and other Parts of this Kingdom, as also in Ireland, and other his Majesty's Dominions, which manifestly tend to the common Grievances, Prejudice and Inconvenience of great Numbers of your Majesty's Subjects in their Trade or Commerce, and other their Affairs; and the Persons who contrive or attempt such dangerous and mischievous Undertakings or Projects, under false Pretences of publick Good, do presume, according to their own Devices and Schemes, to open Books for publick Subscriptions, and draw in many unwary Persons to subscribe therein towards raising great Sums of Money, whereupon the Subscribers or Claimants under them do pay small Proportions thereof, and such Proportions in the whole do amount to very large Sums; which dangerous

sation. In estimating the Extent of such Compensation, regard is to be had to the present Extent of Insurance effected by the Companies, the average Profit arising thereon for a reasonable and adequate length of Time, and the probable Diminution of such Profit by admitting a Competition which the Act at present excludes; with such a Preponderance in favour of the Companies as would preclude the reasonable Apprehension of Error and Injustice. The Fund for answering such Compensation would, I conceive, be easily found in an adequate Charge upon private Policies.

The Advantage to be expected from such a Change would arise from a Competition for a Character of Fairness and Integrity, as is fully evinced in the Instance of the several Societies for Insurance from Fire and on Lives, and the reasonable Preference which is at present given to the known Principles that regulate the Practice of the chartered Companies; whereas to any Person who looks with Attention at the judicial Proceedings of the Country, it is obvious, that in no one Department of the Law (with the single Exception of Cases founded on the Annuity Act) is there exhibited so extended a Practice of Chicanery and Dishonesty as in the Objections taken to the Validity of Policies of Insurance.

The original Purpose of this Statute, viz. affording an Indemnity against inevitable Accidents, is evidently of the most beneficial Tendency; and the Advantage resulting from it, notwithstanding all the Subtractions arising from an unfair Spirit of Resistance, are of very great Magnitude and Importance; but after the Compensation for this Indemnity is paid, and the Loss which has been contemplated has occurred, without the slightest Imputation of Unfairness or Misconduct, the general Course of Proceeding appears to be to examine, whether, by any Means, the Law will afford an Opportunity of evading the Performance of the Engagements that have been deliberately entered into; and a Person who, would be hoodwinked by Garraway's, if insisting upon the strict Protection of the Law upon a Contract for the Transfer of Stock, will still acquiesce to those, who at all the Confidence of an honest Man, while sheltering himself under the Protection of the most strict and technical Objection to the Policy of Insurance.

The entering into Contracts, in direct and wilful Derogation of the Law, is a Proceeding which I have no wish to commend or apologize for; but there are many Instances in which the Rules of Law, for very adequate Reasons, may withhold Redress for the enforcing a Contract which it would be a Violation of the plainest and simplest Principles of common Integrity to evade; and of this the Illustrations arising from the Subject before us, are unfortunately too numerous and manifest.

The following Observation of Lord Loughborough, in deciding upon the Invalidity of a Contract of another Nature, is sufficiently indicative of the grand Principle which it is desirable to indicate—"This Agreement, resting on private Contract and Honour, may perhaps be fit to be executed by the Parties, but can only be enforced by Considerations which apply to their Feelings, and is not the Subject of an Action. The Law encourages no Man to be unfaithful to his Promise, but legal Obligations are, from their Nature, more circumscribed than moral Duties"—*Parsons v. Thompson*, 1 H. Bl. 397.

* mischievous Undertakings or Projects do relate to several Fisheries,
 * and other Affairs, wherein the Trade, Commerce, and Welfare of
 * your Majesty's Subjects, or great Numbers of them, are concerned
 * or interested: And whereas in many Cases the said Undertakers or
 * Subscribers have, since the said four and twentieth Day of June one
 * thousand seven hundred and eighteen, presumed to act as if they were
 * Corporate Bodies, and have pretended to make their Shares in Stocks
 * transferrable or assignable; without any legal Authority, either by
 * Act of Parliament, or by any Charter from the Crown for so doing;
 * and in some Cases the Undertakers or Subscribers, since the said four
 * and twentieth Day of June one thousand seven hundred and eighteen,
 * have acted or pretended to act under some Charter or Charters form-
 * erly granted by the Crown for some particular or special Purposes
 * therein expressed, but have used or endeavoured to use the same
 * Charters for raising Joint Stocks, and for making Transfers or As-
 * signments, or pretended Transfers or Assignments for their own pri-
 * vate Lucre, which were never intended, or designed by the same
 * Charters respectively; and in some Cases the Undertakers or Sub-
 * scribers, since the said four and twentieth Day of June one thousand
 * seven hundred and eighteen, have acted under some obsolete Charter
 * or Charters, although the same became void or voidable by Nonuser or

No. 3.
 6 Geo. I. c. 18.

Without entering into a long Enumeration of Cases in support of the Obser-
 vations which I have made respecting Policies of Insurance, or intending to cast
 Reflections on particular Individuals, who, in defending themselves against parti-
 cular Claims, and who have only acted according to the general System which I
 am endeavouring to counteract, I am induced to refer to a Case in which it was
 objected with Success that the Insurance could not be recovered on a Vessel
 warranted neutral, and lost by the Perils of the Seas; because, for a small
 Part of the Voyage, a proper Document for attesting such Neutrality was not
 on board, but in which Case I well remember that it was observed by one of
 the Judges who concurred in the Decision, that he remembered the Times
 where an Underwriter would have been ashamed to have insisted upon such an
 Objection. The Cases in which the Liability upon an Insurance at and from
 Canton was objected to, because the being at Canton was an Infraction of the
 Charter of the East India Company—a more recent Case in which the
 Objection was taken from the forgotten and abandoned Charter of the South
 Sea Company—the Cases of Objections from an Inaccuracy in respect of the
 complicated Provisions of the Register Acts, wholly unconnected with the
 loss incurred, are all Instances of that Spirit of Resistance to fair and reasonable
 Claims which, I conceive, would be most materially diminished by the
 removal of the existing Restrictions upon insuring by a common Fund, and
 by admitting that Competition which would excite an Interest in acquiring the
 Character as attached to known respectable Bodies for a fair Performance of
 the Engagements that are entered into according to their real Purpose and
 Intention as opposed to the existing and too powerful Interest of looking for a
 Defence in the Intricacies and Subtleties of the Law.

I have, in Conversation, heard it offered as a Defence against the Habit of
 Insurers to insist upon minute and technical Objections, that they are exposed
 to numerous Frauds which they are unable to detect or prove; and that
 therefore the insisting upon legal Advantages in their favour is only an adequate
 Means of Security and Defence; but I apprehend that it will not require any
 particular Strength of Reasoning to prove, that to commit a Fraud upon one
 Person is not the proper Means of obtaining Security or Indemnity against the
 Fraud committed by another.

Besides the Objections already mentioned to the existing Monopoly,
 there is another of very considerable Importance, in the Necessity which it
 imposes upon the Assured of incurring the Expence of a separate Action upon
 every separate Subscription to the Policy. The Insurers have an Opportunity,
 by Means of the well-known Practice of the Consolidation Rule, to unite in
 one common Defence, but, by declining to take that Course, they have the
 Opportunity of harrassing the Assured with an Accumulation of Expence, in
 many Cases exceeding the Amount of the Indemnity which he sues for.

No. 3.

6 Geo. 1. c. 18.

‘Abuser, or for want of making lawful Elections, which were necessary for the Continuance thereof; and many other unwarrantable Practices (too many to enumerate) have been, and daily are and may hereafter be contrived, set on foot, or proceeded upon, to the Ruin and Destruction of many of your Majesty’s good Subjects, if a Remedy be not provided: And whereas it is become absolutely necessary, That all publick Undertakings and Attempts, tending to the common Grievance, Prejudice and Inconvenience of your Majesty’s Subjects in general, or great Numbers of them, in their Trade, Commerce, or other lawful Affairs, be effectually suppressed and restrained for the future, by suitable and adequate Punishments for that Purpose to be ascertained and established:’ Now for suppressing such mischievous and dangerous Undertakings and Attempts, and preventing the like for the future, May it please your most excellent Majesty, at the humble Suit of the said Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, that it may be enacted; and be it enacted by the Authority of this present Parliament, That from and after the four and twentieth Day of *June* one thousand seven hundred and twenty, all and every the Undertakings and Attempts described, as aforesaid, and all other publick Undertakings and Attempts tending to the common Grievance, Prejudice and Inconvenience of his Majesty’s Subjects, or great Numbers of them, in their Trade, Commerce, or other lawful Affairs, and all publick Subscriptions, Receipts, Payments, Assignments, Transfers, pretended Assignments and Transfers, and all other Matters and Things whatsoever, for furthering, countenancing or proceeding in any such Undertaking or Attempt, and more particularly the acting or presuming to act as a Corporate Body or Bodies, the raising or pretending to raise transferrable Stock or Stocks, the transferring or pretending to transfer or assign any Share or Shares in such Stock or Stocks, without legal Authority, either by Act of Parliament, or by any Charter from the Crown, to warrant such acting as a Body Corporate, or to raise such transferrable Stock or Stocks, or to transfer Shares therein, and all acting or pretending to act under any Charter, formerly granted from the Crown, for particular or special Purposes therein expressed, by Persons who do or shall use or endeavour to use the said Charters, for raising a Capital Stock, or for making Transfers or Assignments, or pretended Transfers or Assignments of such Stock, not intended or designed by such Charter to be raised or transferred, and all acting or pretending to act under any obsolete Charter become void or voidable by Nonuser or Abuser, or for want of making lawful Election, which were necessary to continue the Corporation thereby intended, shall (as to all or any such Acts, Matters and Things, as shall be acted, done, attempted, endeavoured or proceeded upon, after the said four and twentieth Day of *June* one thousand seven hundred and twenty) for ever be deemed to be illegal and void, and shall not be practised or in any wise put in execution.

After 24th June, 1720, all Undertakings tending to the Prejudice of the Subjects, and all Subscriptions, &c. thereto,

or presuming to act as Corporate Bodies without legal Authority,

and all acting under obsolete Charters, &c.

shall be deemed illegal and void.

All such Undertakings deemed publick Nuisances,

XIX. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of *June* one thousand seven hundred and twenty, all such unlawful Undertakings, and Attempts, as tending to the common Grievance, Prejudice and Inconvenience of his Majesty’s Subjects, or a great Number of them, in their Trade, Commerce or other lawful Affairs, and the making or taking of any Subscriptions for that Purpose, the receiving or paying of any Money upon such Subscriptions, the making or accepting of any Assignment or Transfer, or pretended Assignment or Transfer, of any Share or Shares upon any such Subscription, and all and every other Matter or Thing whatsoever, for furthering, countenancing, or proceeding in any such unlawful Undertaking or Attempt, and more

particularly the presuming or pretending to act as a Corporate Body, or to raise a transferrable Stock or Stocks, or to make Transfers or Assignments of any Share or Shares therein, without such legal Authority, as aforesaid, and all acting or pretending to act under any Charter formerly granted from the Crown for any particular or special Purposes therein expressed, by Persons making or endeavouring to make use of such Charter for any such other Purpose not thereby intended, and all acting or pretending to act under any such obsolete Charter as is before described, and every of them (as to all or any such Acts, Matters or Things as shall be so acted, done, attempted, endeavoured or proceeded upon, after the said four and twentieth Day of June one thousand seven hundred and twenty) shall be deemed a publick Nuisance and Nusances, and the same, and all Causes, Matters and Things relating thereto, and every of them, shall for ever hereafter be examined, heard, tried and determined as common Nusances are to be examined, heard, tried and determined by or according to the Laws of this Realm; and all Offenders therein, being thereof lawfully convicted upon Information or Indictment, in any of his Majesty's Courts of Record at Westminster, or in Edinburgh, or in Dublin, shall be liable to such Fines, Penalties and Punishments, whereunto Persons convicted for common and publick Nusances are, by any of the Laws and Statutes of this Realm, subject and liable; and moreover shall incur and sustain any further Pains, Penalties and Forfeitures, as were ordained and provided by the Statute of Provision and Preamble made in the sixteenth Year of the Reign of King RICHARD the Second. (3.)

No. 3.
6 Geo. 1. c. 18.

and shall incur a
Preamble,
16 R. 11. c. 5.

(3) In *Rex v. Cawood*, 2 Ld. Raym. 1361, 2 Str. 472, it was ruled, that the Court were not obliged to give the whole Judgment as in case of a Preamble, but only such Part as in their Discretion they should think fit, and they adjudged the Defendant to pay a Fine of £5, and to be imprisoned during the King's Pleasure. This Case, which occurred two Years after the passing of the Act, was only brought before the Courts until the *King v. Dodd*, 9 East. 516, in which the Court declined to grant an Information against the Defendant for circulating Schemes for a Paper Manufactory and a Distillery, by which large Capitals were to be raised in small transferrable Shares, there having been a lapse of 87 Years since any authenticated Proceeding had been taken on this Branch of the Act; but they declined giving any Opinion how far the Case, as stated, came within the Act, as the Point might still arise upon Indictment or Information by the Attorney General.

In *Buck v. Buck*, 1 Camp. M. P. 547, the Plaintiff having employed the Defendant to purchase five Shares in a Concern not incorporated, called the British Ale Brewery, and the Defendant having only paid One Half of the Amount, which he had received and charged, it was ruled, by Sir J. Mansfield, C. J. that the Plaintiff, on account of the illegality of the Concern, could not recover Money which was so improperly retained, and a Nonsuit was accordingly directed, with leave to move the Courts to enter a Verdict in the Plaintiff's favour, but the Case was not brought before the Court. The Decision certainly went a very great Length, however clearly the Society might be brought within the Act, when it was held, that the mere Carrier of a Sum of Money intended to be applied in purchasing a Share of the Concern, was entitled to purloin the Money with which he was so entrusted. In *Rex v. Stratton*, *n. inf.* Lord Ellenborough held, that an Indictment could not be sustained for conspiring to deprive a Person of the Office of Secretary of the Philanthropic Annuity Society, and to prosecute him for obtaining Money by false Pretence, the Association appearing to be an unincorporated Company with transferrable Shares.

The Subject came into more direct Discussion in *Rex v. Webb* and others, 14 East. 406, which was an Indictment against the Defendants founded upon the Act for subscribing to form a Society, called the Birmingham Bread and Flour Society: it appearing by special Verdict, that the Defendants with others, being Inhabitants of Birmingham, mutually agreed to be Co-partners in making Bread, &c. with a Capital of £20,000, to be divided into 20,000

No. 3.

6 Geo. 1. c. 18.
How Merchants
or Traders may
have their Remedy
against the
Undertakers.

XX. And be it further enacted by the Authority aforesaid, That if any Merchant or Trader, at any Time after the said four and twentieth Day of June one thousand seven hundred and twenty, shall suffer any particular Damage in his, her, or their Trade, Commerce, or other lawful Affairs, by Occasion or Means of any Undertaking or Attempt, Matter or Thing, by this Act declared to be unlawful, as aforesaid, and will sue to be relieved therein, then and in every such Case, such Merchant and Trader shall and may have his and their Remedy for the same by an Action or Actions to be grounded upon this Statute, against the Persons, Societies or Partnerships, or any of them, who contrary to this Act shall be engaged or interested in any such unlawful Undertaking or Attempt; and every such Action and Actions shall be heard and determined in any of his Majesty's Courts of Record aforesaid, wherein no Essoin, Protection, Wager of Law, or more than one Imparlance shall be granted or allowed; and in every such Action the Plaintiff shall or may recover treble Damages with full Costs of Suit.

Penalty on Bro-
ker, buying or sel-
ling any Share
in any Undertak-
ing.

XXI. And it is hereby further enacted by the Authority aforesaid, That if any Broker or Person acting as a Broker for himself, or in Behalf of any others, at any Times or Times after the said four and twentieth Day of June one thousand seven hundred and twenty, shall bargain, sell, buy or purchase or contract or agree for the bargaining, selling, buying or purchasing of any Share or Interest in any

Shares—no Person to hold more than 25—that no Person should transfer any Share, except the Party, to whom it was transferred, should enter into a Covenant for the Performance of the Clauses in the Deed—that each Member should purchase weekly, for every Share, Flour and Bread, not exceeding in Value one Shilling. It was further found, that the Company was originally instituted from laudable Motives, for the Purpose of more regularly supplying the Town of Birmingham and its Neighbourhood with Flour and Bread—that it was in its original Institution, and still is, beneficial to the Inhabitants at large at Birmingham and its Neighbourhood, but was prejudicial to the Bakers and Millers of the Town and Neighbourhood in their respective Trades; and it was ruled, that the Indictment could not be maintained. Lord Ellenborough, in delivering the Opinion of the Court, took a very full and elaborate View of this Part of the Act, in the Course of which he observed, that what was described as illegal might be divided into two Classes—First, the Undertakings described in the Preamble, especially those in which the Parties pretend to act as a Body Corporate, or to have transferable Stock—and, Secondly, all other Undertakings tending to the common Grievance, &c. of the King's Subjects, or a great Number of them, in their Trade, Commerce, or other lawful Affairs. Upon the View taken of the Statute, he said, the Court thought it impossible to say that it makes a substantive Offence to raise a large Capital by small Subscriptions, without any regard to the Nature and Quality of the Objects for which the Capital was raised, or whatever might be the Purposes to which it was to be applied. The Recital of the Act referred to such dangerous and mischievous Undertakings as manifestly tend to the common Grievance, &c.—the enacting Part, Sec. 18, to Subscriptions for such Undertakings, viz. such as are mentioned in the Preamble—the enacting Part, Sec. 19, to unlawful Undertakings and Attempts to tending to the common Grievance, &c. and to making Subscriptions for that Purpose. It is therefore, he said, only where the Subscription is with Reference to Undertakings, &c. which the Act prohibits, that it is illegal—the Act does not apply indiscriminately to all Subscriptions. The Purpose being in this Case expressly found to be beneficial, the only remaining Question is, whether, as the Shares are to the Extent pointed out transferable, the Defendants have offended in respect of having raised such a Description of transferable Stock? It may admit of doubt, whether this mere raising transferable Stock is in any Case per se an Offence against the Act, unless it has Relation to some Undertaking or Project which has a Tendency to the common Grievance, Prejudice, or Inconvenience of his Majesty's Subjects, or of great Numbers of them? The Mischief intended to be remedied arose from such Undertakings and Projects, and the Suppression

of the Undertakings by this Act declared to be unlawful, or in any Stock or pretended Stock of such Undertakers, that then and in every such Case, every such Broker or Person acting as such, shall not only be disabled and rendered incapable to be or act as a Broker for the future, but shall also forfeit and lose the Sum of five hundred Pounds, to be recovered, to wit, One Moiety thereof to the Use of the King's Majesty, his Heirs and Successors, and the other Moiety thereof to the Use of any Person or Persons who will inform or sue for the same in any of his Majesty's said Courts of Record, with full Costs of Suit.

No 3.
6 Geo. 1. c 18.

XXII. [Not to extend to Undertakings settled before the 24th of June, 1718.]

XXIII. Provided also, and it is hereby further intended, declared and enacted by the Authority aforesaid, That any of the Clauses Matters or Things in this Act contained, shall not extend, or be construed to hinder his Majesty from erecting or establishing the two Corporations intended by this Act to be erected and established, as is above-mentioned, or either of them, or to prejudice those two Corporations, or either of them (when erected) in the Exercise or Enjoying of the Powers, Privileges, Benefits or Advantages intended to be granted to them respectively, by such respective Charters or Indentures as are above-mentioned in that Behalf, subject nevertheless to such Powers of Redemption or Revocation as are above in this Act

Not to prejudice the two Corporations hereby intended.

of such Undertakings and Projects seems to be the great Object of the Act. But without entering particularly into that Point, it may be sufficient to say here, that, in the qualified Extent to which these Shares are transferable, it cannot be said that there has been such a raising of transferable Stock as to fall clearly within the Scope of the Act. He then particularly adverted to its not being the Object of the Undertaking to raise Stock for the Purpose of Transfer, as a commercial Speculation—to the limited Number of Shares which any Individual was allowed to hold—and to the Necessity of entering into a Covenant to take a certain Quantity of Bread or Flour weekly, as Circumstances shewing the Case not to be within the Operation of the Act, and Judgment was accordingly given for the Defendants.

In *Pratt v. Hutchinson*, 15 East. 311, the Action was brought on a Bond given to the Treasurer of a Building Society, the Members of which were to subscribe monthly Sums for building Houses, to be taken by the Subscribers in Succession, by lot, such Subscribers entering into a Bond for the Payment of their future Contributions. It was pleaded as sufficient to bring the Case within the Statute, that, according to the Rules, every Member should have Power to sell his Share, provided the Purchaser should become a Party to the Articles; and that no Person should be permitted to purchase until he had been first proposed and approved at a Meeting of the Society; and that certain Tradesmen named should be employed, and no others. The Court called upon the Defendant's Counsel to state upon what Ground it could be contended, that the Shares were transferable within the Meaning of the Statute, where the Holder had not the Power of Transferring, except upon the Condition of the Purchaser being approved. It being urged, that in the preceding Case the Nuisance was negatived by the special Finding of the Jury, Bailey, J. observed, that the Plea did not alledge generally as a Question for the Jury, that the Society was prejudicial to the Public at large, and therefore, unless it be brought within the Statute, it is no answer. An Objection being taken on account of the Stipulation of employing particular Tradesmen, Lord Ellenborough said, the Combination must be for some illegal Object, but there is nothing illegal in stipulating to employ particular Persons only in the Building, and the Court decided, that there was no Pretence for the Objection made upon the Statute.

In *Carlen v. Drury*, 1 V. & B 154, a Question arose as to the Legality of a Partnership in a Brewery of 1600 Shares, to be under the Directions of Managers and a Committee. The Lord Chancellor declined entering into the Question, whether the Partnership fell within the Terms of the Act; and decided the Case upon a collateral Ground, applicable to a Partnership, to which there was no legal Objection.

No. 3. prescribed for that Purpose, any Thing in this Act contained to the contrary notwithstanding (1)

XXIV. [Not to prejudice the South-Sea Company]
 XXV. Provided always, That nothing in this Act shall extend, or be construed to extend to prohibit or restrain the carrying on of any home or foreign Trade in Partnership, in such Manner as hath been hitherto usually, and may be legally, done, according to the Laws of this Realm now in Force, excepting only as to the insuring of Ships and Goods or Merchandizes at Sea, or going to Sea, and lending Money upon Bottomry, any Thing in this Act to the contrary in any wise notwithstanding (5)

Not to restrain the carrying on of any home or foreign Trade in Partnership.

XXVI [South-Sea and East-India Companies may advance Money on Bottomry to their Companies, &c.]

XXVII. [Not to extend to Corporations formerly created, or to any Subscriptions to be made to the Capital of the South-Sea.]

XXVIII [Salvo for East-India Company's Privileges.]

XXIX [Companies not to lend Money to the Crown but on Credit of Acts of Parliament.]

(4) The inserting this Proviso is a striking Instance of superfluous Caution, and affords a strong Illustration of the Weakness of the incidental Arguments which are sometimes deduced from particular saving Clauses, as limiting the Operation of the general Purview of the Statute. It is impossible that any Court could have held it necessary to insert a saving Clause, in favour of the Establishments erected by the very Act which contains the general Prohibition.

(5) An Idea is sometimes entertained, that Partnerships in general, consisting of more than six Persons, are illegal; but the only Prohibition upon the Subject is that contained in Statute 6 Anne, c. 22, Sec. 9, and subsequent Statutes, which prohibit, during the Continuance of the Charter of the Bank of England, Partnerships of more than six Persons taking up Money upon their Notes, payable on Demand in less than six Months from the Time of borrowing.

No. 4.

11 George I. c. 30.—An Act for more effectual preventing Frauds and Abuses in the Publick Revenues; for preventing Frauds in the Salt Duties, and for giving Relief for Salt used in the curing of Salmon and Cod-fish, in the Year One Thousand Seven Hundred and Nineteen, exported from that Part of Great Britain called Scotland; for enabling the Insurance Companies to plead the General Issue in Actions brought against them; and for securing the Stamp Duties upon Policies of Insurance.

11 Geo I c 30.
 6 Geo I c 18.

XLIII. And whereas by an Act passed in the sixth Year of his Majesty's Reign, intitled, *An Act for the better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money on Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned*, his Majesty was enabled to erect two distinct Corporations for Assurance of Ships, Goods and Merchandizes at Sea or going to Sea, and for other Purposes therein mentioned: And whereas his Majesty hath been

‘graciously pleased, pursuant to the said Act, to erect two distinct Corporations for the Purposes aforesaid, one by the Name and Title of *The Royal Exchange Assurance*, and the other by the Name and Title of *The London Assurance*; and whereas the said Corporations, in Pursuance of the said Act, and the Ends and Purposes for which they were so incorporated, have, from Time to Time, as Occasion hath required, entred into and executed great Numbers of Policies of Assurance for the assuring of Ships and Goods and Merchandizes at Sea, or going to Sea, and still continue so to do; but by reason of their being Bodies Corporate, such Policies of Assurance could not be entred into by their subscribing of the same, as is the constant Usage for private Insurers to do, but the respective Common Seals of the said Corporations are set to such Policies of Assurance, and by Means thereof, the Manner of Proceeding and Pleadings in any Suit or Action to be commenced upon such Policy of Assurance under the respective Common Seals of the said Corporations are different from the Proceedings and Pleadings in Actions and Suits commenced upon Policies of Assurance entred into by private Insurers, or Persons not incorporated in Manner as aforesaid; and by reason of the Necessity of pleading specially in such Cases, the whole Merit of the Case in question cannot oftentimes come into Consideration, and the Jury, by the Rules of Law, are often obliged to find a Verdict for the whole Sum of Money assured, though it be never so apparent, that in Justice only a small Part thereof is due to the Assured by such Policies of Assurance; and the said Corporations are thereby forced to seek Relief in Courts of Equity, when the Matter in question might be as well determined at once by a Jury, as it is done in the Case of private Insurers or Persons not incorporated;’ For Remedy whereof, Be it enacted by the Authority aforesaid, That from and after the twenty-fourth Day of June One Thousand Seven Hundred and Twenty-five, on all Actions of Debt to be sued or commenced against either of the said Corporations, upon any Policies of Assurance under the common Seal of such Corporation for the assuring of any Ship or Ships, Goods or Merchandizes at Sea or going to Sea, it shall and may be lawful to and for the said respective Corporations, in such Action or Suit, to plead generally, that they owe nothing to the Plaintiff or Plaintiffs in such Suit or Action; and that in all Actions of Covenant, which shall be sued or commenced against either of the said Corporations upon any such Policy of Assurance under the Common Seal of such Corporation for the assuring any Ship or Ships, Goods or Merchandizes, at Sea or going to Sea, it shall and may be lawful for the said respective Corporations, in such Action or Suit, to plead generally, that they have not broke the Covenants in such Policy contained, or any of them; and if thereupon Issue shall be joined, it shall and may be lawful for the Jury, if they shall see Cause upon the Trial of such Issue, to find a Verdict for the Plaintiff or Plaintiffs in such Suit or Action, and to give so much or such Part only of the Sum demanded if it be an Action of Debt, or so much in Damage if it be an Action of Covenant, as it shall appear to them upon the Evidence given upon such Trial, such Plaintiff or Plaintiffs ought in Justice to have, or is or are entitled unto; any Law or Custom to the contrary notwithstanding.

No. 4.
11 Geo. 1 c. 30.

The Insurance Company may plead the General Issue in Actions brought against them.

No. 5.

19 George II. c. 37.—An Act to regulate Insurance on Ships belonging to the Subjects of *Great Britain*, and on Merchandizes or Effects laden thereon.

19 Geo. II. c. 37.

No Assurance to be made on Ships or Effects, for Subjects, Interest or no Interest.

WHEREAS it hath been found by Experience, that the making of Assurances, Interest or no Interest, or without further Proof of Interest than the Policy, hath been productive of many pernicious Practices, whereby great Numbers of Ships, with their Cargoes, have either been fraudulently lost and destroyed, or taken by the Enemy in Time of War; and such Assurances have encouraged the Exportation of Wool, and the carrying on many other prohibited and clandestine Trades, which by Means of such Assurances have been concealed, and the Parties concerned scotched from Loss, as well to the Diminution of the publick Revenue, as to the great Detriment of fair Traders; and by introducing a mischievous kind of Gaming or Wagering, under the Pretence of assuring the Risque on Shipping, and fair Trade, the Institution and laudable Design of making Assurances hath been perverted; and that which was intended for the Encouragement of Trade and Navigation, has, in many Instances, become hurtful of, and destructive to the same: For Remedy whereof be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *August One Thousand Seven Hundred and Forty-six*, no Assurance (1) or Assurances shall be made by any Person or Persons, Bodies Corporate or Politick, on any Ship or Ships belonging to his Majesty, or any of his Subjects, (2) or on any Goods, Merchandizes, or Effects laden or

(1) The Act prohibits all Contracts of Insurance, by Way of Gaming or Wagering; therefore, an Agreement in consideration of £20 to pay £1000, in case a Ship should not save her Passage to Canton that Season (not being founded upon an insurable Interest) is void.

(2) It is doubtful whether a wagering Policy was not void at Common Law, and some of the earlier Cases cited in the Books on Insurance seem to proceed upon that Supposition, and by the Ordinances of most other Countries such Insurances are void, but their Legality was established by some Cases previous to the Statute, and except so far as the Statute interferes, they are still admitted as valid, and of course the Prohibition does not extend to foreign Ships or compose *semble* the Goods on board such Ships; and therefore in *Thelluson v. Fletcher*, Doug. 315, upon an Insurance of Goods on board Ships, the Policy to be deemed sufficient Proof of Interest, it was ruled, that the Plaintiff might recover the Amount of the Defendant's Subscription without any Proof of the Value, or any other Evidence; and in *Nantes v. Thompson*, 2 East. 385, it was held, that it was not necessary in a Policy on a foreign Ship to aver any Interest in the Assured, although there be no such Words, as *Interest or no Interest* in the Policy (and see *Keller v. La Messurier*, 4 East. 396, in which a Question arose as to the Necessity and Manner of alleging a Ship to be foreign, and whether the Statute had rendered any other Mode of declaring on the Subject of Interest necessary than what was usual and deemed sufficient before, but no Opinion was given on the Point, the Case being decided upon a different Ground); but in *Cousins v. Nantes*, 3 Taunt. 513, (being an Action on the same Policy as the Case of *Nantes v. Thompson*) it was ruled, in the Exchequer Chamber, not to be sufficient to shew in the Declaration that the Ship did not belong to the King or any of his Subjects, as supplying the Necessity of Words shewing that it was a wagering Policy, but that it was necessary to be inserted in the Contract whether the Policy was a wagering Policy or not; and that, not being a wagering Policy, but an ordinary Policy, made for the Purpose of indemnifying the Person insured, it was necessary to allege the Interest in the Declaration,

to be laden on board of any such Ship or Ships, Interest or no Interest, or without further Proof of Interest than the Policy, ^{No. 5.} by Way of ^{19 Geo. II. c. 37.} Gaming or Wagering, or without Benefit of Salvage to the Assurer; and that every such Assurance shall be null and void to all Intents and Purposes. (3)

(3) It is observed by Mr. Millar in his Treatise on Insurance, that the Object of Insurance, strictly speaking, is not to make a positive Gain, but to avoid actual Damage and Harm from the Event provided against. The Assured must not only have an Interest in the Subject, but he must be seeking Indemnification in case that Subject in which he is so interested should be lost or impaired. But that although an Insurance, strictly and accurately speaking, seems to relate to positive Loss, merely in Opposition to expected Profit, yet this Distinction is not generally attended to. The Failure of an Advantage of which we have formed a strong Expectation does not appear very different from actual Damage sustained. Between a Wager, therefore, and an Insurance, the material Difference seems to be, the Assured having a pecuniary Interest in the Subject. He further observes, that by the Ordinances of almost all the commercial States in Europe, Wagers upon mercantile Adventure, are totally prohibited. No support is given in any Extent whatever to a gaming Contract, if it be executed in the Form of an Insurance, and every Insurance upon expected Profit, in Opposition to positive Loss, is mentioned in a very unfavourable light of View.

The French Regulation prohibits the Owner and Master of Ships purchasing Insurance on their Freight, or Merchants on the expected Profits of their Goods. By the Ordinance of Canningberg, all Insurances on expected Gain of future Freight Monies, securing Wagers, are irrevocably forbid. In Britain, Ideas less strict, have been entertained:—in particular, the Distinction between an Insurance against positive Loss and upon expected Profit is totally overlooked.

In *Grant v. Parkinson*, Park, c. 14, p. 269, 2 ed. 1 Marshall, 111, an Insurance was sustained on Goods valued at £1000, being Profits expected to arise on the Cargo, in the Event of its arriving at Quebec. It appeared, that the Insurance was on the Profits expected to arise on a Cargo of Molasses belonging to the Plaintiff, who had a Contract to supply the Army with Spruce Beer. In *Flint v. Le Mesurier*, 1796, Park, c. 14, Lord Kenyon expressed a strong Opinion in favour of an Insurance, declared by the Policy to be on Commission, as Consignee of the Cargo. In *Barclay v. Cousins*, 2 East. 545, an Insurance was held on Profits valued at ——— on an African Voyage—it being averred, that Plaintiff was interested in the Profits to arise from the Sale and Disposal of the Cargo. A very elaborate Judgment, stating a general View of the Law upon the Subject, was given by Lawrence, J.—and see *Henrickson v. Margerson*, *n. vld.* where the Policy was declared to be on imaginary Profits. In *Eyre v. Glover*, 18 East. 218, the Insurance was on Profits, without further Description, and held good. A Mariner cannot insure his Wages or Commissions—*Webster v. De Tastet*, 7 T. R. 157—it being against the maritime Law, that Wages should be due to them unless Freight is earned; but this does not apply to the Master, who may insure his Commissions, Privileges, and *commis-général* his Wages.—*King v. Glover*, 2 N. R. 206.

With respect to Interests arising out of Captures and Detention, it was ruled, in *Le Cras v. Hughes*, Park, c. 14, Millar, 226, that an Insurance might be supported upon a joint Capture, by Sea and Land Forces, on Account of the Interest of the Officers and Crews of the Squadron in the Prize. Lord Mansfield, after adhering to the Interests under the Prize Acts and Proclamation, said, besides the Crown has long been in the use to grant Captures to the Takers: here the Assured have Possession with Expectations founded on universal Practice. In order to render Insurance a Contract of Indemnity, an Interest on the Part of the Assured is necessary, but no particular Form of Interest. It is sufficient if the Contingency be of such Consequence that I may lose it if it does not happen.—Millar. Whenever a Capture has been made by a King's Ship, or a Privateer, the Crown has always given a Grant of it after Condemnation. There is no Instance to the contrary. Has not then the Insured such an Interest in the Ship coming Home as to entitle him to an Indemnity? Suppose a Man is made Agent of the Prizes, he has

No 5.

19 Cud. II. c. 37.
Assurance on private Ships of War, may be made Interest of no Interest.

II. Provided always, and be it further enacted by the Authority aforesaid, That Assurance on Private Ships of War, fitted out by any of his Majesty's Subjects, solely to cruize against his Majesty's Enemies

not the Possession of the Property, and yet he has such an Interest in any Ship arriving Home, that he may insure. Here the Insured have the Possession, and a certain Expectation of receiving the Property captured, for this is an Emolument from the Crown—Park; but as to this View of the Subject, *vide infra*. In *Boehm v. Bell*, 8 T. R. 154, the Action was for a Return of Premiums on the Insurance of a Vessel captured, and was ruled not to be maintainable. Lord Kenyon—“The Ship was captured by Captains acting in the Service of their Country, and upon whose Conduct there is not the smallest Imputation: they had the Possession of the Property insured, and from that Possession certain Rights and Duties resulted. If it were a legal Capture, the Captors were entitled; if the Capture were improperly made, they were liable to be called to an Account in the Court of Admiralty, where they might be amerced in Damages and Costs. It was important to them, that there should be something forthcoming to answer for the Amount of those Damages.” Lawrence, J.—“The Case turns on this short Question, whether or not the Assured has an Interest which they might insure? Did they mean to game? Or, was not there a Loss against which they might indemnify themselves by a Policy of Insurance? I do not mean a certain, but a possible Loss. As it has been shewn, that the Court of Admiralty might have decreed Damages and Costs, and that is sufficient. Some Doubts having been thrown on the Subject, in the Discussion in the House of Lords of the Case of *Licence v. Crawford*, *infra*, it was holden, in *Sterling v. Vaughan*, 11 East. 619, that an Insurance might be made of a Prize taken by the conjoined Forces of the Army and Navy, by an Agent appointed to act on Behalf of all interested in the Capture, and by Lord Ellenborough, “By the Act of 45 Geo. III. c. 72, the Crown gives up its Rights in the Prize to the Captors, subject, however, as before, to the final Adjudication of the Property as Prize. But it is said, that the Crown may still release the Prize to the Captured before Condemnation. But that Right of the Crown touches no more upon the insurable Interest of the Captors, than upon that of the King himself. It is then objected, that the Property in the Prize may never become vested in the Captors. It is stated, however, as far as the Crown has any Right to vest it, defensible no doubt by an Adjudication of the Court of Admiralty; but is it not in common Experience, that a defensible Interest is insurable? It is the Case of every Consignor of Goods under a Bill of Lading; they may be stopped *in transitu*, and his Interest defeated; the Captors have the actual Possession of the Grant of the King, the only Person in the Kingdom who could contest it with them. They have the Possession, with a partial Right of disposing of the Thing immediately. This is not the insurable Interest Expectation, like the Case of the Dutch Commissioners, *infra*. But these Captors had a present Possession, and a Right to maintain Trespass against any Person attempting to take the Prize from them. Even with Respect to Captors in general, supposing the Prize not to have been acquired tortiously, but *jure belli*, I should should think, that in respect of their Possession and special Property they might insure, but it is not necessary to decide that general Point, because here the Captors had a more perfect Right, a Right of Property, so far as the Crown had a Power of granting it, liable only to be disposed of by the Release of the Crown before Condemnation, or by Sentence of Restoration.” The other Judges expressed themselves to the same Effect. With respect to the Argument founded upon the King's Power to release, Bailey, J. said, “The Faith of the Crown is pledged to proceed to Condemnation, and not to release the Prize, except under special Circumstances involving the Interest of the Public; the King can take nothing for himself, nor give it to any third Persons.”

But in *Routh v. Thompson*, 11 East. 426, an armed Ship having captured and taken into Lisbon a Danish Vessel, after a Proclamation requiring the bringing such Vessels into Port, and having taken a Freight to England, with which the Vessel captured sailed on the Day of issuing of Letters of Marque, it was ruled, that an Insurance made on Behalf of the Captors could not be sustained. Lord Ellenborough on delivering the Judgment of the Court said, “The Right had been put upon two Grounds—first, that they had a well grounded Expectation, warranted by the Practice of the Crown in similar

mies, may be made by or for the Owners thereof, Interest or no Interest, free of Average, and without Benefit of Salvage to the

No. 5.

19 Geo. III. c. 37.

Cases, that the Ship and Freight, had there been no Loss, would have been granted to them—and secondly, that they had the lawful Possession, and were liable, either to the Crown or the foreign Owner, for the safe Custody of the Vessel. As to the first, they had no vested Right; they could demand nothing of the Crown. Had the Crown made the Grant in their Favour, it would have been altogether *ex gratia*—a mere Boon and Gift. That Gift might have been of the Whole, or it might have been of Part, and of a very inconsiderable Part only. The Bounty of the Crown would probably have been in Proportion to the Merit of the Detention and Capture, and the Value of the Prize. Had the Ship arrived, the Captors would have had a Chance of a Grant from the Crown; but can they in respect of that Chance insure the Ship's Arrival, and supposing such a Chance insurable, must it not be insured specifically as such Chance? Must not the Interest be so described in the Policy? Can a Man, who has no Right, legal or equitable, either in a Ship or Freight, effect an Insurance on either, merely because he has a Chance that some collateral Benefit may arise to him, if the Ship and Cargo should arrive in Safety? His Lordship referred to the Passage above cited from *Le Gras and Hughes*, and the Doubts thrown thereon by Lord Eldon, in *Lucena v. Crawford*, *post*; but, supposing the Authority of that Case were unquestionable upon both the Points decided, held that it would afford no Rule to govern a Case like the present. With regard to the second Point in the principal Case, it was held, that the Captors were not entitled to recover on the Ground of Possession—that it was a lawful Possession, but they were not responsible for the Ship's Safety—that the Crown could not call upon them for Damages, and they could have no Right to ask for an Indemnity when they had not been, and (under the Circumstances stated) could not have been damaged. The Case was stated in such a Manner as to exclude the Question, whether the Insurance might have been supported as made on Behalf of the Crown.

Very considerable Discussion, respecting the Nature of insurable Interest, took place in respect of Insurances effected by the Commissioners upon Dutch Property, in the Year 1795. By 35 Geo. III. c. 80, § 21, the King was empowered to grant Commissions to three or more Persons, authorizing them to take the Ships and Cargoes, belonging to the United Provinces, into their Possession, and under their Care, and to manage, sell, and dispose of the same to the best Advantage, according to such Instructions as they should receive. In *Crawford & al. v. Hunter*, 5 T. R. 13, the Declaration stated a Commission issued to the Plaintiff by Virtue of the Act, that certain Ships, &c. were seized at Sea by his Majesty's Sailors, upon which the Plaintiffs, being such Commissioners, caused an Insurance to be made from St. Helena to London, that if the King's Ships arrived in London, the Plaintiffs would have been authorized to take them under their Care, &c.—that they were interested to the Amount insured, and that the Insurance was made for their Use, as such Commissioners. Another Count was upon the Interest of the King, averring the Insurance to be made on his Behalf—and a third Count, not averring any Interest alleged, that the Ships were not belonging to his Majesty or any of his Subjects, upon which the Question arose, whether Interest ought to have been averred, as has since been held necessary, in the Case of *Couins v. Nares*, (see the last Note). Upon Demurrer, it was ruled, upon the first Count, that the Commissioners had such an Interest as enabled them to insure. The Subject came more fully into Consideration, in *Lucena v. Crawford*, (in error) 3 B. & P. 75, and in Dom. Proc. 4 N. R. 313. The Counts were similar to those in the preceding Case—and Lord Kenyon, having given an Opinion, that the first Count was sufficiently proved, directed the Jury to find accordingly. A Bill of Exceptions was tendered.—On the other Counts a Verdict was found for the Defendant. The only Facts necessary to be adverted to are the Order to Ships to seize and bring in Ships of the United States, dated in February—the Commission to the Defendants, dated the 19th June—the sending in from St. Helena in July—the Loss of some of the Vessels previous to the 15th September—that, on the 15th September, general Letters of Marque were issued against the United States, subsequent to which the Loss took place of another of the Vessels, (the *Zeeleyse*)—and that, on the 10th October, a Commission issued to the Court of Admiralty to proceed to

No. 5. Assurer; any Thing herein contained to the contrary thereof in any 19 Geo. II. c. 37. wise notwithstanding.

the Adjudication of such Ships, of which Possession had been, or should be taken by the Commissioners, reserving to the Commissioners the sole Disposition and Management thereof. In the Exchequer Chamber, the Judges were (except Chambre, J.) of Opinion, that the Plaintiffs had an insurable Interest, as Trustees under the Commission, which was not varied by the subsequent Declaration of Hostilities and the new Commission issued thereon. The Judgment being affirmed, upon Appeal to the House of Lords, the Nature of insurable Interests was very fully examined, both in the printed Cases and in the Opinion of the Judges. Several important Questions were put to the Judges, which, with their Answers, fully appear in the Report. Upon the Question; whether the Plaintiff had an insurable Interest, Graham, B. Le Blanc, J. Rooke, J. Grose, J. Heath, J. Mc. Donald, C. B. and Mansfield, C. J. concurred in the Affirmative as to all the Ships, and Thomson as to all except the *Zeceleye*—the Loss of which did not happen till after the Proclamation of Reprisals. Chambre, J. and Lawrence, J. answered in the Negative, principally on the Ground, that the Commission was only to take care of the Property after its Arrival in England; and that, if till then they had not any Power to interfere with it, they could not be said, at the Time of the Sailing and Loss, to have been interested. The following Extract, from the Opinion of Lawrence, J. seems to throw a very considerable Light on the general Question as to the Nature of insurable Interests.—“That a Man must somehow or other be interested in the Preservation of the Subject Matter exposed to Perils, follows from the Nature of the Contract, when not used as a Wager, but as applicable to the Purposes for which it was originally introduced; but to confine it to the Protection of the Interest which arises out of Property, is adding a Restriction to the Contract, which does not arise out of its Nature. A Man is interested in a Thing, so whom Advantage may arise, or Prejudice happen, from the Circumstances which may attend it, in *quantum mea interest*; i. e. *quantum michi abest contingens lucrum potius*—Dig. lib. 46, tit. 8, l. 15; and whence it imports, that its Condition, as to Safety or other Quality, should continue. Interest does not necessarily imply a Right to the Whole or a Part of the Thing, nor necessarily and exclusively that which may be the Subject of Privilege, but the having some Relation to, or Concern in the Subject of the Insurance, which Relation or Concern, by the happening of the Perils insured against, may be so affected as to produce a Damage, Detriment, or Prejudice to the Person insuring; and where a Man is so circumstanced, with respect to Matters exposed to certain Risks or Dangers, as to have a moral Certainty of Advantage or Benefit, but for those Risks or Dangers, he may be said to be interested in the Safety of the Thing. To be interested in the Preservation of a Thing is to be so circumstanced, with respect to it, as to have Benefit from its Existence, or Prejudice from its Destruction. The Property of a Thing, and the Interest derivable from it, may be very different; of the first, the Price is generally the Measure—but by Interest in a Thing, every Benefit and Advantage arising out of or depending upon such Thing, may be considered as comprehended.” All the Judges agreed, that the Question could not be considered as a Policy on the Profits which the Commissioners were to receive from their Employment, being declared upon as a Policy upon the Plaintiff’s Interest in the Ships. Lord Eldon took a very full View of the Circumstances of the particular Case, and said, that if he were bound then to state his Opinion judicially, he should be obliged very strongly to say, that the Claims of the Plaintiffs could not be supported; but said, he was sure it could not be supported as to the *Zeceleye*, which he thought the Plaintiffs could not have taken into their Possession as Commissioners, although the King, after the Declaration of Hostilities, had made them his Agents; and, as entire Damages had been given, he suggested, that it would be proper to award a *retraite de novo*, that the whole Record would be then carried down, and the Case would be open, and all the different Interests, which were averred in the other Counts. Lord Ellenborough and the Lord Chancellor (Eskine) concurring in this View of the Subject, a *retraite de novo* was awarded accordingly; and, in *Cousins v. Nanters*, 3 Taunt. 515, the Court declared, that the only Question in *Lucena v. Crawford* was, whether the Decision of the Court, which was worded in a particular Way, contained

III. Provided also, and it is hereby enacted, That any Merchandizes or Effects from any Ports or Places in Europe or America, in the

No. 5.

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Assurance on Effects from Spain and Portugal.

such an Averment of Interest as would support the Judgment of the Court below. Upon the second Trial of *Lucena v. Crawford*, a Verdict was found for the Plaintiff, on the Count alleging an Interest in the Crown. A Bill of Exceptions was tendered to Lord Ellenborough's Direction, as to the Crown having a sufficient Interest, and also as to the Insurance being made on Behalf of, or adopted by the Crown; but the Judgment for the Plaintiff was affirmed in the House of Lords, 1 Taunt. 325. In a second Case of *Routh v. Thompson*, 13 East. 274; it was ruled, that the Crown had an insurable Interest in Danish Vessels, seized under an Order of Council, made previous to the Commencement of Hostilities. As to the Adoption of such Insurance, *vide post*.

Before quitting this Case, I think it not wholly irrelevant to advert to the Opinions expressed with regard to the Conduct of the Underwriters in resisting the Demand, as affording some Confirmation of the Remarks made in a former Number of the Want of Fairness, which is frequently manifested in resisting Demands upon Policies of Insurance upon strictly legal Objections. Lord Kenyon, in *Crawford v. Hunter*.—"The Underwriters, knowing what kind of Interest the Plaintiffs had in the Property, took the Premium, considering them as having a Right to make the Insurance, and, when the loss happened, they refused to pay what they had engaged to pay, pretending that the Plaintiffs had no Right to make the Insurance. Unconscientious, however, as the Objection made by the Defendant may be, if it be a legal Objection, he has a Right to insist upon it in a Court of Law. *Chambre, J.* in *Lucena v. Crawford*.—"So far as respects the Parties in Dispute, I certainly shall not regret that my Opinion is overruled, as I do not see upon what honourable Principle the Performance of the Contract is resisted by the Defendants who have not been deceived. But have made their Contract with full knowledge of all the Circumstances of the Case." Lord Eldon—"With respect to the Conduct of the Underwriters, I have said nothing. Courts of Justice have no Right to tell men whether they have acted honestly or dishonestly. It is the Duty of a Court to say whether they have acted legally. To that Consideration I have entirely confined myself." I should not have thought it requisite to have cited these Observations, if they only bore upon the Conduct of the individual Underwriters in this particular Case. But numerous as the Subscriptions to the Policies in Question must have been, the Importance of the Consideration arises from what may be regarded (so far as appears from the Cases that come before the Public) a systematic Principle of Conduct which is allowed to operate to so great an Extent, without the Fear of Censure or Reproach, in Opposition to the plain and obvious Dictates of Justice and Integrity.

It was admitted in the Discussion of *Lucena v. Crawford*, that a mere Expectation, without Interest, such as that of the next of Kin of a Lunatic, cannot be the Subject of Insurance.

The following Cases have occurred with respect to the Degree and Kind of Interest which are requisite when the Subject is in its Nature insurable. *Hibbert v. Carter*, 1 T. R. 745. The Person, on whose Behalf the Insurance was made, had, after the Consignment and before the Insurance, indorsed the Bill of Lading to a Person to whom he owed an Arrear of Interest. This was at first considered as absolutely passing the Property and defeating the Insurance, but it afterwards appearing that the Indorsee of the Bill of Lading was only intended to receive the net Proceeds, and that the Amount of the Goods had been accounted for to the Indorsee after the Loss, a new Rule was granted whereon the Plaintiff recovered. In this Case it is evident from the Circumstances, that the Indorsement was merely by way of giving the Goods as a Pledge and not as a Transfer by way of Sale, and in such case the Risk of Loss remains with the Debtor giving the Pledge and not with the Creditor receiving it; and it seems clear that the Creditor has an Interest in insuring for the Security of his Pledge, the Debtor in respect of his Liability in case of the Pledge becoming insufficient, and that either Party may receive on the whole Amount of his Policy. As to Contribution between the Insurers, (see *Goonin v. London Insurance Company*, 1 Burr. 489,) a Consignment was made to Dubois and Son; and the Bills of Lading indorsed to them. They were directed to hold a certain Proportion for the Plaintiff, a Creditor of the

No. 5. Possession of the Crowns of Spain or Portugal, may be assured in such Way and Manner, as if this Act had not been made.

Consignor. It was ruled, that the Plaintiff had an insurable Interest—that the Consignees were to be considered as Trustees for him from the Time the Goods were shipped—that the being a Creditor raised a good Consideration—see *Hill v. Secretan*, 1 B. & P. 315. In *Wolfe v. Horncastle*, 1 B. & P. 316, Lund consigned to the Cudbear Company, and sent the Bills of Lading to the Plaintiff, his general Agents, to deliver to the Cudbear Company, drawing upon them in favour of the Plaintiffs to whom he was indebted for 1100*l*. and drew a Bill upon the Plaintiffs for 300*l*. which they accepted. The Cudbear Company refused to take the Cargo or to accept the Bill, whereupon the Plaintiffs caused an Insurance to be effected; and it was ruled, that they had an insurable Interest for the 300*l*. for which they were interested in the Goods: (Q*u*. if this Interest was not to the whole Amount for which they were to receive Satisfaction out of the Cargo. The Observation, as to the Amount of the Interest, was only incidental, and no Point in the Cause.) Buller, J. said, "it is contended that they are without Interest, because they had only a Debt against Lund; but that a Debt, which has no Reference to the Article insured, and which cannot make a Lien on it, will not make an insurable Interest. But a Debt which arises in Consequence of the Article insured, and which would have given a Lien on it, does give an insurable Interest, the Plaintiffs having advanced their Money on the Security of the Bills of Lading and Policy, must, if the Goods had arrived, have received 300*l*. out of them; being lost, the Insurance stands in the Place of them, and the Plaintiffs are entitled to receive that Sum under Policy." Heath, J. "It is true, that if the Cudbear Company had altered their Minds and taken to the Cargo, that the Plaintiffs would have had no Interest, but if they had a contingent and reasonable Expectation of Interest it was sufficient." This Observation was referred to with Approbation in the Cases of *Lucena v. Crawford*, and *Stirling v. Vaughan*, cited *supra*.

Another Point in this Case arose upon an Objection, ruled to be unfounded, taken upon Stat. 28. Geo. III. *infra*. but which is here only referred to on account of the following Remarks by Buller.—"The Ship sailed on her Voyage—the Premium was paid—it was a real *bona fide* Transaction—no Fraud has been suggested—a Loss has happened, and the Underwriter now chooses to say that for want of a strict Compliance with the 28th. Geo. III. he shall be excused from paying the Money. But was taken no Underwriter would have dreamed of making such an Objection, if the Solicitor had suggested a Loophole by which he might escape; he would have turned at the Idea. He would have said, 'Is it not a fair Case? I have not retained the Premium? And shall I not pay, when the Loss has happened, pay the Money? This would have been his Answer, and he would have immediately ordered his Broker to settle the Loss. As to the Commencement of the Plaintiff's Interest, in *Rhind v. Wilkinson*, 2 Taunt. 227. it was said by the Court of Common Pleas, that if the Declaration had averred that the Plaintiff was interested at the Time of the Commencement of the Ship's sailing, or that the Policy was made on a certain day, and the afterwards on a subsequent Day the Plaintiff acquired an Interest, it would have sufficed; and, if that would have been good, the Allegation of Interest at the Time of effecting the Policy was an immaterial Allegation, and need not be proved. It was immaterial to aver Interest at any Day previous to the Commencement of the Risk. It is every Day's Practice to insure Goods on a certain Voyage, being before the Goods are bought." The above Opinion is noticed here on account of the Observations as to the Time at which it is necessary that the Interest should attach; but the Opinion must be considered in a great Measure as extrajudicial, the Judgment being in favour of the Defendant upon a collateral Point; and the Question, as to the Necessity of proving the Allegation actually made, (whether material or otherwise) of Interest at the Time of effecting the Insurance, may perhaps admit of further Consideration.

The following Cases have been decided with respect to the Character of the Agent by whom the Insurance is effected, as connected with the Interest of the Principal. In the above-mentioned Case of *Wolfe v. Horncastle*, the Question on the first Court turned upon the Agreement, that the Insurance was effected by the Plaintiffs as the Agents of Lund. It appeared that they were

IV. And he it further enacted by the Authority aforesaid, That No. 5.
it shall not be lawful to make Re-assurance, unless the Assurer shall 19 Geo. II. c. 37.

Reassurance in
print Cases admit-
ted, &c.

his general Agents, that the Bills of Lading were transmitted to them to be handed over to the Cadbear Company, who repudiated the Consignment, whereupon Plaintiffs effected the Insurance without any Order to do so, and immediately wrote to advise Lund thereof, who returned an Answer, expressing his Approbation; and it was ruled, that this was a sufficient Agency, and also that it satisfied the Description of the Plaintiffs as Persons receiving the Order to insure within Stat. 28 Geo. III.; and per Buller, J.—“It is agreed, that a general Agent has a Right to exercise his Discretion for the Benefit of his Principal, he must act upon the Spur of the Occasion, and if nothing else had passed, I have doubts whether the Consignor would not have been liable to pay the Premiums. But the Plaintiffs take the Opportunity to inform the Consignor of their having made their Insurance, and he highly approves of their Acts, which being the Case within the Maxim that *omnia rati habito mandata equiparantur*.” In the second Case of *Lucena v. Crawford*, 1 Taunt. 325, a Letter to the Dutch Commissioners from the Secretary of the Treasury, by Order of the Board, on the same Day on which the Insurance was effected, intimating their Opinion that it would be prudent to insure, and desiring them to take the necessary Steps accordingly, was sent, and not to be sufficient to shew an Authority to make the Insurance in the Name or on the Behalf of the Crown, or as a Ratification of such Insurance; but the Judgment for the original Plaintiffs (the Defendants in error), was affirmed without calling upon them to answer the Objections. In *Stirling v. Vaughan*, 11 East. 619; (decided upon another Point already mentioned,) upon its being said, that the Insurance made by the Direction of the Captors for the Benefit of all concerned, might be considered as made under an implied Authority to insure for the Crown. Lord Ellenborough said, “The Law will presume, if nothing appear to the Contrary, that every Person accepts that which is for their Benefit. And here it is for the Benefit of the Crown to preserve the Prize, if it were only for the Purpose of securing to the Captors the Reward, which its Bounty provided for them in the Event of Condemnation.”

Upon a second Case of *Routh v. Thompson*, respecting Danish Vessels seized by virtue of an Order of Council, the Prize Agent having directed an Insurance directing the Plaintiff to do the best for the concerned, it having been ruled, that the Crown had an insurable Interest in the Subject, it was further held, that an Order of Council, subsequent to the Loss, adopting and approving of the Insurance, and authorising the Assured to sue for his Majesty's Use, was sufficient to entitle the Plaintiff to recover.—13 East. 274.

In *Hagedorn v. Oliversen*, 2 M. & S. 465, the Plaintiff who was employed to obtain a License for a Ship to proceed with a Cargo from certain Limits to Great Britain, effected, without any Direction, an Insurance on the Ship on Behalf of all Persons to whom the same might belong. The only Evidence of a Recognition of his Authority to make such Insurance was a Letter from the Owner two Years after the Loss, expressing a Hope that he had settled with the Underwriters, and this was held sufficient. Lord Ellenborough said, that the Plaintiff had a Right to effect an Insurance on the Chance of its being adopted for the Benefit of all those to whom it might appertain, which are the Words of the Policy. He might insure for those who were actually interested, and possibly for those who might be interested. The Owner was interested, and might become privy to the Benefit of the Insurance by subsequent Adoption. He had adopted it, and it is made a Question whether he can become privy to the Benefit of it. It appears to me, upon the Authorities of *Lucena v. Crawford*, and *Routh v. Thompson*, that he may. The other Judges expressed their Opinions to the same Effect.

It is settled that a valued Policy is not objectionable, although the Value stipulated may exceed the Amount of actual Interest, provided the Valuation is not a mere Cover for a Wager, as (to use the Expression of Lord Mansfield) if a Person who insures for 2000l. has Interest only to the Value of a Cable—see the Subject fully discussed in *Lewis v. Rucker*, 2 Bur. 117. The Valuation does not raise a mere presumption which may be repelled by Evidence, but the Insurers are liable for the full Amount in a Case not amounting to a colourable Wager, although they may prove an over Valuation—see *Le Puyre v. Fazor*, in Dom. Proc. 258, —*McNay v. Coulter*, *id.* 255.

No. 5.
19 Geo. II. c. 37.

The Conditions
for lending Sums
on Bottom-ree, up-
on Ships bound to
or from the East
Indies.
Sec. 5 Bur. 1393.

be insolvent, become a Bankrupt, or die; in either of which Cases such Assurer, his Executors, Administrators, or Assigns, may make Re-assurance, to the Amount of the Sum before by him assured, provided it shall be expressed in the Policy to be a Re-assurance. (4)

V. And be it further enacted by the Authority aforesaid, That from and after the said first Day of August, all and every Sum and Sums of Money to be lent on Bottom-ree, or at Respondentia, upon any Ship or Ships belonging to any of his Majesty's Subjects, bound to or from the *East Indies*, shall be lent only on the Ship, or on the Merchandize or Effects laden, or to be laden, on board of such Ship, and shall be so expressed in the Condition of the Bond; and the Benefit of Salvage shall be allowed to the Lender, his Agents or Assigns, who alone shall have a Right to make Assurance on the Money so lent; and no Borrower of Money on Bottom-ree, or at Respondentia, as aforesaid, shall recover more on any Assurance than the Value of his Interest on the Ship, or in the Merchandizes or Effects laden on board of such Ship, exclusive of the Money so borrowed; and in case it shall appear that the Value of his Share in the Ship, or in the Merchandizes or Effects laden on board, doth not amount to the full Sum or Sums he hath borrowed as aforesaid, such Borrower shall be responsible to the Lender for so much of the Money borrowed, as he hath not laid out on the Ship or Merchandizes laden thereon, with lawful Interest for the same, together with the Assurance, and all other Charges thereon; in the Proportion the Money not laid out shall bear to the whole Money lent, notwithstanding the Ship and Merchandizes be totally lost.

In all Actions
the Plaintiff to declare
within fifteen Days
what Sums he hath
assured.

VI. And be it further enacted by the Authority aforesaid, That in all Actions or Suits brought or commenced after the said first Day of August, by the Assured, upon any Policy of Assurance, the Plaintiff in such Action or Suit, or his Attorney or Agent, shall within fifteen Days after he or they shall be required so to do in Writing, by the Defendant, or his Attorney or Agent, declare in Writing what Sum or Sums he hath assured, or caused to be assured, in the Whole, and what Sums he hath borrowed at Respondentia or Bottom-ree, for the Voyage, or any Part of the Voyage in question in such Suit or Action.

VII. And whereas it is unreasonable that any Person or Persons, Body or Bodies Corporate, subscribing, sealing, or otherwise execut-

No Interest can be averred in a Ship contrary to the Provisions of the Register Act—See *Calden v. Anderson*, 5 T. R. 309; but the Register alone is not sufficient Proof of Property or Interest—*Pirie v. Anderson*, 4 Taunt. 652. An Averment that two Parties were interested is not disproved by Evidence that previous to the Insurance they had admitted a third—*Page v. Fry*, 2 B. & P. 40. But an Averment that the Policy was made for one joint Owner, and that he was interested in the Subject insured, cannot be sustained, if it appear that the Policy was effected on the joint Account of himself and the other Owner—*Ball v. Ansley*, 16 E. 141.

In the first Case of *Roth v. Thomson* above stated, 11 E. 428, the Court, after deciding that the Captors of a Danish Ship, brought in under an Order of Council, had no insurable Interest, held, that as there was no Fraud in the Captors in effecting the Policy, as there was no Illegality in the Voyage or Insurance, and as the Resistance of the Underwriters to the Claims on the Policy proceeded upon the Ground that there was no Risk, the Plaintiff was intitled to a Return of his Premium. As to return of Premium on mere Wager Policies, see *Lowry v. Boudieu*, Doug. 466.

(4) This extends to Re-assurance on foreign Ships. The Person effecting the Re-assurance is not intitled to a Return of Premium, the Insurer having succeeded in retaining the Payments of a Loss on account of the Illegality of the Contract—*Audie v. Fletcher*, 2 T. R. 161. A Re-assurance differs from a double Assurance, the former being effected by the Insurer to transfer his Responsibility, the latter by the Assured to increase his Security.

ing any Policy or Policies of Assurance should be put to any Costs, Charges, or Expences, in any Suit or Action at Law, to be brought on such Policy or Policies, in case such Person or Persons, Body or Bodies Corporate, is or are ready or willing to pay such Damages and Costs, as shall and may be really and *bona fide* due thereon, which at present they are liable to, and often forced unjustly to bear, for that in many Cases upon such Policies, no Money can be brought into Court: For remedy whereof, be it enacted by the Authority aforesaid, That from and after the said first Day of August, it shall and may be lawful for any Person or Persons, Body or Bodies Corporate, sued in any Action or Actions of Debt, Covenant, or any other Action or Actions, on any Policy or Policies of Assurance, to bring into Court any Sum or Sums of Money; and if any such Plaintiff or Plaintiffs shall refuse to accept such Sum or Sums of Money, so brought into Court as aforesaid, with Costs to be taxed, in full Discharge of such Action or Actions, and shall afterwards proceed to Trial in such Action or Actions, and the Jury shall not assess Damages to such Plaintiff or Plaintiffs, exceeding the Sum or Sums of Money so brought into Court, such Plaintiff or Plaintiffs, in every such Case or Cases, shall pay to such Defendant or Defendants, in every such Action and Actions, Costs to be taxed; any Law, Custom, or Usage to the contrary notwithstanding.

Persons sued on Policies of Assurance to bring the Money into Court; Plaintiff not accepting it, and Jury not assessing greater Damages, to pay Costs.

VIII. Provided always, and it is hereby declared, That this Act shall not extend to, or be in Force against any Persons residing in any Parts or Places in *Europe*, out of His Majesty's Dominions, for whose Account any Assurance or Assurances shall be made before the twenty-ninth Day of September, in the Year of our Lord One Thousand Seven Hundred and Forty-six; nor extend to, or be in Force against any Persons residing in any Parts or Places in *Turkey*, or in *Asia*, *Africa*, or *America*, for whose Account any Assurance or Assurances shall be made before the twenty-fifth of March, in the Year of our Lord One Thousand Seven Hundred and Forty-seven; any Thing herein contained to the contrary thereof in any wise notwithstanding.

Limitations of this Act.

No. 6.

14 George III. c. 48.—An Act for regulating Insurances upon Lives, and for prohibiting all such Insurances, except in Cases where the Persons insuring shall have an Interest in the Life or Death of the Persons insured.

WHEREAS it hath been found by Experience, that the making Insurances on Lives, or other Events, wherein the Assured shall have no Interest, hath introduced a mischievous Kind of Gaming: For Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, no Insurance shall be made by any Person or Persons, Bodies Politick or Corporate, on the Life or Lives of any Person or Persons, or on any other Event (1) or Events whatsoever, wherein the Person or Persons for whose Use, Benefit, or on whose

No Insurance to be made having no Interest, &c.

(1) A Policy on the Sex of a Person was ruled to be within this Prohibition—*De Costa v. Jones*, Cowp. 729. In *Good v. Elliot*, 3 T. R. 693, Buller, J. maintained, that all Wagers upon Subjects, in which the Parties had no Interest, were within the Act; but ruled contra by the other Judges.

No. 6. Account such Policy or Policies shall be made, shall have no Interest,
 24 Geo. III. c. 48. or by way of Gaming or Wagering; and that every Assurance made,
 contrary to the true Intent and Meaning hereof, shall be null and void,
 to all Intents and Purposes whatsoever.

No Policies without inserting Names, &c. II. And be it further enacted, That it shall not be lawful to make any Policy or Policies on the Life or Lives of any Person or Persons, or other Event or Events, without inserting in such Policy or Policies the Person or Persons Name or Names interested therein, or for whose Use, Benefit, or on whose Account, such Policy is so made or underwrote.

How much may be recovered III. And be it further enacted, That in all Cases where the Insured hath Interest in such Life or Lives, Event or Events, no greater Sum shall be recovered or received from the Insurer or Insurers than the Amount or Value of the Interest of the Insured in such Life or Lives, or other Event or Events. (2)

Not to extend to Ships, &c. IV. Provided always, That nothing herein contained shall extend, or be construed to extend, to Insurances *bona fide* made by any Person or Persons, on Ships, Goods, or Merchandizes; but every such Insurance shall be as valid and effectual in the Law, as if this Act had not been made.

(3) A Creditor may insure the Life of a Debtor; but being a Contract of Indemnity, if the Debt is in any way paid, the Assured cannot recover on the Policy—ruled in the Case of an Insurance on the Life of Mr. Pitt, whose Debts were paid by Parliament—*Godsal v. Boldero*, 9 E. 73.

No. 7.

25 George III. c. 44.—An Act for regulating Insurances on Ships, and on Goods, Merchandizes, or Effects.

25 Geo. III. c. 44.

WHEREAS it hath been found by Experience, that the making or effecting Insurances on Ships or Vessels, and on Goods, Merchandizes, and Effects in Blank, and without specifying therein the Name or Names of any Person or Persons for whose Use and Benefit, or on whose Account, such Insurances are made or effected, hath been, in many Respects, mischievous, and productive of great Inconvenience; for Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the fifth Day of July One Thousand Seven Hundred and Eighty-five, it shall not be lawful for any Person or Persons, who shall live or reside in Great Britain, to make, or cause to be made, any Policy or Policies of Assurance upon his, her, or their Interest in any Ship or Ships, Vessel or Vessels, or on any Goods, Merchandizes, Effects, or other Property, without inserting in such Policy or Policies, his, her, or their own Name or Names, as the Person or Persons interested therein, or the Name or Names of the Person or Persons who shall effect the same, as the Agent or Agents of the Person or Person so really interested therein, or for whose Use or Benefit, or on whose Account, such Policy or Policies is or are so made or underwrote, and that it shall not be lawful, from and after the said fifth Day of July One Thousand Seven Hundred and Eighty-five, for any Person or Persons who shall not live or reside in Great Britain, to make, or cause to be made, any Policy or Policies of Assurance upon his, her, or their Interest in any Ship or Ships, Vessel or Vessels, or on any Goods, Merchandizes, Effects, or other Property, without inserting in such

No Policy of Insurance on Ships or Goods to be made without inserting the Names of the Persons interested, &c.

Policy or Policies the Name or Names of the Agent or Agents of the Person or Persons so really interested therein, or for whose Use or Benefit, or on whose Account, the same is or are so made or underwrote; and that every Policy or Policies of Assurance, made or underwrote contrary to the true Intent and Meaning hereof, shall be null and void to all Intents and Purposes whatsoever. (3)

No. 7.
25 Geo. III. c. 44.
Policies made contrary, void

(3) See *Cox v. Parry*, 1 T. R. 469.—It has been thought eligible to insert this Act, although repealed by the following Number.

No. 8.

28 George III. c. 56.—An Act to repeal an Act, made in the twenty-fifth Year of the Reign of his present Majesty, intituled, *An Act for regulating Insurances on Ships, and on Goods, Merchandizes, or Effects*; and for substituting other Provisions, for the like Purpose, in lieu thereof.

WHEREAS it hath been found, by Experience, that great Mischiefs and Inconveniencies have arisen to Persons interested in Ships or Vessels, and also to Persons using Trade or Commerce, from the Effect of an Act made in the twenty-fifth Year of the Reign of his present Majesty, intituled, *An Act for regulating Insurances on Ships, and on Goods, Merchandizes, or Effects*: And whereas it is highly expedient that other and more convenient Provisions should be made for the regulating Insurances hereafter to be made on Ships, and on Goods, Merchandizes, or Effects, than those which are contained and enacted in and by the said Act; he it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Act, made in the twenty-fifth Year of the Reign of his present Majesty, shall be, and the same is hereby repealed; and that, from and after the passing of this Act, it shall not be lawful for any Person or Persons to make or effect, or cause to be made or effected, any Policy or Policies of Assurance upon any Ship or Ships, Vessel or Vessels, or upon any Goods, Merchandizes, Effects, or other Property whatsoever, without first inserting, or causing to be inserted, in such Policy or Policies of Assurance, the Name or Names, or the usual Stile and Firm of Dealing of the Consignor or Consignors, Consignee or Consignees of the Goods, Merchandizes, Effects, or Property so to be insured; or the Name or Names, or the usual Stile and Firm of Dealing of the Person or Persons residing in Great Britain, who shall receive the Order for and effect such Policy or Policies of Assurance, or of the Person or Persons who shall give the Order or Direction to the Agent or Agents immediately employed to negotiate or effect such Policy or Policies of Assurance.

28 Geo. III. c. 56
Preamble.

25 Geo. III. c. 44.

repealed, and in Policy to be made on any Ship, &c. without inserting thereon the Name or Names, or the Firm of Dealing, of one or more of the Persons interested, &c.

II. And be it further enacted by the Authority aforesaid, That every Policy and Policies of Assurance, made or underwrote contrary to the true Intent and Meaning of this Act, shall be null and void to all Intents and Purposes whatsoever. (1)

Policies made contrary to this Act to be void.

(1) For the Occasion and Reasons for passing this Act, and 25th Geo. 3. c. 44, see the Observations of Buller, J. in *Wolfe v. Horncastle*; 1 B. & P. 316—*Bell v. Gibson*, id. 345. In the first of these Cases it was held, that the Act

No. 8. was sufficiently complied with, in a Case where A consigned Goods to B, drawing Bills upon B in favour of C, the general Agent of A, and transmitted the Bills of Lading to C, with Directions to hand them over to B, that he might have an Opportunity to insure, and also drew a Bill on C, which was accepted and paid: B having refused to accept the Bills or take to the Cargo, C effected the Insurance in his own Name, which he communicated to A, who expressed his Approbation. For the Animadversions of Buller, J. on the Conduct of the Underwriter, see Note 2, to No. 5, *supra*. In the later Case it was held sufficient, that the Broker for the Plaintiff, who effected the Policy, was therein called *Agent*, without stating for whom; and in *De Vignier v. Swanison*, *n. ibid*, it was held to be sufficient, that the Persons effecting the Policy were averred in the Declaration to be Agents, not being described as such in the Policy. Where the Plaintiff, whose Name was on the Policy, and who gave the Order to insure, did so without Authority, but the Person on whose Behalf the Insurance was made afterwards ratified it, it was held sufficient, the Plaintiff being the Person who gave the Order.—*Hagedon v. Oliverson*, 2 M. & S. 485. But where the Declaration averred, that the Plaintiff *received the Order* for, and effected the Insurance, it was held to be a material Averment,—and that a previous Order must be shown, and a subsequent Adoption, was not sufficient, although perhaps the Declaration might have been good without the Averment.—*Bell v. Johnson*, 1 M. & S. 201. In *Mellish v. Bell*, 15 E. 4, it was ruled, that a Declaration that the Plaintiffs, M & N, caused a Policy to be effected, averring that Messrs. John Gore & Co. did make Assurance, was good after Verdict. Per Lord Ellenborough—“The Act requires that the Persons making the Insurance should fall within one or other of the Descriptions therein mentioned, but not that they should be described as such *ex nomine* in the Policy.” *Le Blanc, J.*—“The only Question is, whether it should be stated upon the Record that Gore & Co. are mere Names, or whether it may be shewn by Evidence.

PART III. CLASS IV.

BILLS OF EXCHANGE AND PROMISSORY NOTES.*

No. 1.

9 & 10 William III. c. 17.—An Act for the Payment of inland Bills of Exchange.

‘**W**HEREAS great Damages and other Inconveniencies do frequently happen in the Course of Trade and Commerce, by reason of Delays of Payment and other Neglects on inland Bills of

9 & 10 W. III.
c. 17.

* Considering the Utility of Bills of Exchange and Promissory Notes, while applied to their proper and legitimate Purposes on the one Hand, and the Mischief which frequently arises from the Abuse of them on the other, there are few Subjects in the Compass of the Law which are of more extensive practical Importance than the duly Regulating these Contracts, and the defining with Accuracy and Precision the several Rights and Obligations resulting from them. And, in relation to their peculiar transferable Quality, I think it is highly desirable that their Character and Incidents should, as much as possible, appear upon the Face of the Instruments themselves and not be affected by collateral Enquiries, except so far as regards the particular Individuals between whom the immediate Transaction, which is the Subject of Enquiry, should have taken place; and, with this View, I have taken the Liberty of suggesting the following legislative Regulation:

1. In the first place, I think that the Character of a Bill of Exchange, as distinguished from that of a Promissory Note, should be so distinctly marked, that there may be no hazard of misleading even those who may be ignorant or inattentive, by making the latter assume the Semblance of the former. A Deception upon this Subject is often practised by inserting the Name of some great commercial House on that Part of the Paper at which the Name of a Drawee of a Bill of Exchange is usually placed; and sometimes inserting and at other times omitting the Word *I*, before the Direction to pay, and placing the Word *at* generally in an indistinct Manner above the Name of the House at which the Instrument professes to be payable; and many Persons are deluded by taking these Instruments as Bills drawn upon such House, which is not the Case when the Word *I* is inserted. I apprehend that the Law is not settled as to the Character of the Instrument when that Word is omitted; and it seems desirable to enact, generally, that in all Cases, when a Sum of Money is made payable to any Person or Persons or their Order, or to the Bearer, payable at the House of any other Person or Persons named in such Instrument, the same shall, to all Intents and Purposes be taken in a Bill of Exchange, drawn upon the Persons at whose House it is so made payable, unless the Words *pro ise to pay* shall be inserted in the Body of such Instrument.

2. In pursuance of the same Principles, I think it would be eligible to provide against Ambiguity with respect to the Acceptance of Bills, and for that

No. 1.
9 & 10 W. III.
c. 17.

Bills of Exchange drawn in England, &c. of 5l. or upwards, payable at a certain Number of Days, &c. after Acceptance, and three Days after it is due, may be protested.

'Exchange in this Kingdom;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from

Purpose to do away with all Acceptances by parol or collateral Undertaking; and to provide that nothing be deemed an Acceptance, except the Word *accepted* be written on the Instrument itself, saving to all Parties to whom a promise of Acceptance may be made their Right of Action for the Non-performance of such Promise.

3. As the Law at present stands, an Action may be brought against the Acceptor of a Bill, or the Holder of a Note, without any previous Presentment or Demand of Payment. This is founded upon the unmeaning Maxim, that an Action is a Demand—whereas, in the Nature of the Thing, a Right of Action supposes a previous Default. When the Obligation is in itself perfect and entire,—such as the Discharge of a Bill for Goods sold,—it would be repugnant to hold, that any additional Circumstance should be necessary to maintain an Action for the Non-performance of it; but the real Nature of the Undertaking of an Acceptor of a Bill is to pay the Amount upon its being presented; and great Abuse may arise from allowing him to be arrested, and subjected to the Costs of an Action, for not discovering the accidental Holder and paying the Amount at his Peril. This would be obviated by the mere Provision, that no Action should be maintained against the Acceptor of a Bill, or the Holder of a Note, without a previous Presentment and Demand of Payment.

4. I think that, with reference to the general Interest of the Community, the Balance of Convenience is greatly in favour of permitting the Holder of a Bill, fairly received in the Course of Business, to enjoy the full Benefit of it, according to its apparent Efficacy, without being affected by any collateral Circumstances, such as Gaming and Usury in its original Formation, or Bankruptcy of the Drawer or Payee. Desirable as it may in fact be, to prevent Excess in Gaming,—or as for the Purpose of the Argument it must be supposed to be to discountenance Usury, or to assist the general Creditors of a Bankrupt,—it is infinitely more desirable, that no Person shall be prosecuted in practising a Fraud on the Public, by holding out, as a substantial Agreement, an Undertaking which is of no legal Efficacy. When the immediate Attention of the Legislator is confined to a particular Object, such as the Practice of Gaming or Usury, or the making Provision for Creditors, every other Consideration becomes naturally subordinate to the principal Design; but the true Principle of Legislation in this, as in all other Instances, requires an attentive Examination of the general Balance between opposite Advantages and Inconveniences; and the Interests of Justice will give the Preponderance in Favour of those who are wholly unconnected with the prohibited Transaction, and would be subjected to Loss and Detriment, by giving Credit without any Imputation of Negligence to the apparent Obligation of a legal Document, rather than of those who, however fully they may be entitled to Protection against the Parties with whom they have honestly engaged, have been instrumental in obtaining Credit to the apparent Security. The Protection of the Law is given to the fair Holder, in Case of Want of Consideration, Fraud or general Illegality in the original Structure of the Bill, or in case of its having been subsequently lost or stolen, and there does not appear to be any adequate Cause of public Utility for making an Exception in the particular Cases at present adverted to. The Obligation should, however, be subject to recourse for Repayment against those who, if they had equitably to be Holders of the Securities, would not have been allowed by the Policy of the Law to have made them available, on Account of their own Pliety to the illegal Transaction, but have given Efficacy to the Instruments, and raised, by their Transfer to others, an Obligation which would not have subsisted in favour of themselves.

5. According to the Nature and legal Character of the Contract, the Engagement of the Drawer and Indorser of a Bill is to be accountable for the Amount, in Case of due Presentment being made, and of due Notice given, of the Dishonour; and in case a Contract was entered into, that in its Terms expressed the Condition, which by the Nature of this Engagement is implied, the Performance of such Condition would be a necessary Preliminary to the Right of Action—and it would be no Excuse to say, that the Compliance with the

and after the Four and Twentieth Day of June next, which shall be in the Year One Thousand Six Hundred Ninety-eight, all and every Bill or Bills of Exchange drawn in, or dated at and from, any trading City or Town; or any other Place in the Kingdom of England,

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c. 17.

Condition would have been attended with no Advantage to the Party insisting upon it. The immediate Reply would be *non hac in fœdera veni*. But by a Series of judicial Determinations such an Exception has been extended to the Case of a Drawer having no Effects in the Hands of the Drawee—and in some Instances, the Exception has been extended to the Indorser having Notice that the Instrument was of that Kind which is popularly termed an accommodation Transaction, although in others it has been held, that a Person giving Security, by indorsing a Bill, intended to enter into an Engagement agreeably to the Nature of the Instrument, and to stipulate for a Compliance with the incidental Requisites. In the first Case upon the Subject, *Bickerdike v. Bolman*, 1 T. R. 405, the Bill had not been accepted—and the Case was put on the Ground of the drawing such a Bill upon a Person who had no Effects, being a Fraud; and I have heard Mr Justice Chalmers, who argued the Case, express a Doubt, whether the Doctrine extended to Bills accepted—but no such Doubt can be entertained as the Law is now settled. Lord Eldon has observed, that the Inconveniences which had resulted from establishing the Rule, could only be equalled by those of departing from it when established; meaning I conceive only to refer to the Inconveniences of rescinding the existing Practice by mere judicial Authority, and not to those which would arise in Respect of the Nature of the Subject, from an Interposition of the Legislature. There is, doubtless, much Inconvenience from involving a Contract, the Advantage of which is in a great Degree dependant upon its Plainness and Simplicity, in a perplexed Inquiry as to accidental Matters. The Person who receives a Bill is aware, that the general Validity of the Obligation, against all Parties except the Acceptor, depends upon his complying with the Conditions attached to the Nature of the Contract, and neglecting complying with those Conditions, upon the mere Hazard and Speculation of being able, by accidental Circumstances, to bring himself within the Scope of the Exception. An Examination of the mere Question of Compliance or Non-compliance with the Rule is plain and obvious—the Examination of the alleged Exception, intricate and embarrassing; and I apprehend, that the general Convenience would be best consulted by requiring a strict Compliance with the legal Requisites of the Engagement.

6. Considering the Necessity which sometimes prevails, with respect to the proper Time for giving Notice of Dishonour, I conceive that it would be most beneficial to lay down a certain and uniform Rule, the Compliance with which would in general be of great Facility—and perhaps a Provision, that Notice in Writing shall be personally given, or left at the Dwelling-house or Place of Business of the Person charged, or sent by Post on the Day following the Day of the Dishonour, or the Notice thereof, (in case of that Day falling on a Sunday or great Holiday) would answer all Purposes of general Convenience.

7. I apprehend the Law to be, that if Notice is given by regular Stages from each of the Persons through whose Hands the Bill has passed, the ultimate Holder is entitled to recover against the Drawer or any intermediate Party, having received such Notice in his regular Turn—but if there has been an Omission in any of the Stages, the Holder cannot in general recover. In *Bateman v. Joseph*, 12 E. 433, the Mayor was dispensed with, on the Ground of its being proved, that the Plaintiff did not know the Defendant's Residence, Lord Ellenborough having left it to the Jury, whether he had used due Diligence to find it; but the Uncertainty of these Inquiries, and of the Notion which a Jury may form as to what shall or shall not be considered due Diligence, is in its Nature very inconvenient. I think the most eligible Course would be to require every Holder to submit to his Name & Direction, to which Notice, in Case of Dishonour, should be addressed, upon Pain of being excluded from objecting the Want of Notice, except against the Party to whom he made the immediate Transfer. A Notice in the General, as affecting Persons not giving their Designation, might in some Respects remove the Inconvenience—but I conceive, would be generally not objectionable, on Account of the Detriment to which Parties might be collectively subjected in Consequence of such an Exposure;

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Dominion of Wales, or Town of Berwick upon Tweed, of the Sum of Five Pounds Sterling or upwards, upon any Person or Persons of or in London, or any other Trading City, Town, or any other Place (in which said Bill or Bills of Exchange shall be acknowledged and

8. The Liability of an Indorser, who has been discharged by want of due Presentment or Notice in consequence of a subsequent Promise, is a Subject to which I have heretofore, before the existing Doctrine was firmly established, directed no inconsiderable Share of Attention, (Appendix to Pothier, No. 18;) feeling that such Liability being usually founded on a Promise, induced by mere Terror under a mistaken Idea of legal Obligation, was not supported by the Principles of correct judicial Reasoning, or founded upon any adequate Consideration in point of Law or moral Expediency. The Observation which I have made upon the Kind of Evidence usually given in the Execution of such Promises, does not much regard the Subject in a more favourable Point of View. The Series of Decisions which have taken place since my Reasonings were submitted to the Public, will no longer leave the Question to be considered as open for any practical Purpose, but subsequent Reflection has rather confirmed than removed my original Impressions, considering the Matter on Grounds of Expediency and Propriety, and as of sufficient Importance for legislative Interference. When an Engagement is entered into upon an express Condition, the failure of the Condition induces the Nullity of the Engagement, and there is no Reason, as I have already intimated, to adopt a different Rule with respect to a Condition attached to and inherent in the Nature of the Engagement, and the subsequent Promises relate to a Matter in which the Party making them has ceased to have any Interest or Concern. Promises which have the Effect of discharging the collateral Exceptions founded upon Infancy or the Statute of Limitations stand upon a very different Footing from those which apply to a Ground of Defence affecting the very Nature and Substance of the original Obligation. Upon a Subject which has always appeared to me to be very analogous to that at present under Discussion, the Courts have adopted the Principle which I have contended for, as founded upon the Justice and Rectitude of the Case, it being settled that the Signing of a Loss on a Policy of Insurance is only Evidence by Way of Acknowledgment that the Obligation of Indemnity has attached, and does not stop the Party making such Acknowledgment from shewing with Effect the Want of previous Liability.

9. The Proof of Presentment, especially when the Trial is at a Distance from the Place where it occurred, is attended with so much Expense, that I conceive it would be beneficial, in all Cases where the Distance exceeded ten Miles, to allow such Proof to be made by the Production of the Protest, accompanied by an Affidavit of the Fact made previously by a Notary—but not to allow such Affidavit from a Clerk, on whose Credit the Notary often acts in giving his Attestation to the Protest. In admitting this Alteration there would be little Danger of the Introduction of Perjury—and perhaps the Provision would be extended with Advantage, by admitting similar Proof of an official Notification of the Dishonour of the Instrument.

10. The Provision, by the Statute of William, for supplying the Loss of a Bill by the Substitution of another upon giving an Indemnity, is too indistinct to be attended with much practical Benefit. The Regulation was borrowed from a subsisting Practice in Flanders, but there were Facilities for giving it Effect in that Country which do not prevail according to the English Law. There were regular Judges exercising a summary Jurisdiction in commercial Cases, and no Bills were transferable by general Indorsement—the Security therefore required was only against the Bill having been specially indorsed by the Person alleging the Loss, and no Claim could be set up against it through the Medium of Robbery or accidental Finding. As a Sketch of a suitable Provision upon the Subject, I would suggest, that in Case of a Person having lost or been robbed of a Bill, it should be competent, within a given Time, to make Affidavit of the Fact, and give Notice of such Affidavit to the Drawee—and also to insert a Notification in the Gazette, that in case of a Bill being presented within a limited Time, the Party presenting it should be required to account for his Title by Affidavit—and for a proper Person to be invested with a summary Authority to decide upon the Title to the Bill, or to direct an Issue, as might be deemed expedient—and that upon nonproduction

expressed the said Value to be received), and is and shall be drawn payable at a certain Number of Days, Weeks, or Months after Date thereof, (1) that from and after Presentation and Acceptance of the said Bill or Bills of Exchange, (which Acceptance shall be by the underwriting the same under the Party's Hand so accepting), and after the Expiration (2) of Three Days after the said Bill or Bills shall become due, the Party to whom the said Bill or Bills are made payable, his Servant, Agent, or Assigns, may and shall cause the said Bill or Bills to be protested by a Notary Publick, and in Default of such Notary Publick, by any other substantial Person of the City, Town, or Place, in the Presence of Two or more credible Witnesses, Refusal or Neglect being first made of due Payment of the same; which Protest shall be made and written under a fair written Copy of the said Bill of Exchange, in the Words or Form following:

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“**KNOW** all Men, that I **A. B.** on the _____ Day of _____ at the usual Place of Abode of the said _____ have demanded Payment of the Bill, of the which the above is the Copy, which the said _____ did not pay, wherefore I the said _____ do hereby protest the said Bill. Dated this _____ Day of _____

II. Which Protest so made as aforesaid, shall within Fourteen Days (3) after making thereof, be sent, or otherwise due Notice shall be given thereof, to the Party from whom the said Bill or Bills were received, who is, upon protesting such Protest, to repay the said Bill or Bills, together with all Interest and Charges from the Day such

Protest or Notice thereof to be given in fourteen Days after made, &c.

of the Bill within a limited Time, for instance a Month, the same Remedies should be allowed as if the Party having obtained the Loss had had the actual Possession. Proper Provision might be introduced for giving a regular Notification to the preceding Parties, in the same Manner as if the Bill were forthcoming.

11. I think it would be a great Addition to the Benefit arising from Bills of Exchange and Promissory Notes, if the Parties in case of Default were rendered liable to an Execution upon summary Process, under the Control of a Judge of the superior Courts, with Power to put any disputed Question of Law or Fact into a proper Course of Examination. It would be a great Check upon the random Issue of accommodation Paper, if Parties were aware that their Engagement extended to subject themselves to immediate Execution in case of such Default, whereas there is very little Scruple in giving a mere Signature, which has no other Effect than driving the Holder to a desperate and probably unproductive Action. This summary Remedy was established in the Law of Scotland against the Acceptor, and against the Drawer and Indorser, in case of Non-acceptance, by an Act of 1681, and is extended to Drawers and Indorsers generally, by Stat. 12 Geo. 3, c. 7, § 40, except where the Indorsation is qualified to be without Recourse. I apprehend that the Provision has been found beneficial in its Consequences, and that it would not be less so if adopted in England. To give Effect to this and other summary Proceedings, recommended in different Parts of these Notes, I am aware that some new Arrangements would be requisite in the Judicial Establishment, upon which some general Observations will be introduced in the second Number of the Appendix.

(1) The Act does not apply to Bills made payable after Sight.—*Leahy v. Mill*, 4 T. R. 370.

(2) The Protest cannot be made until the Day after the Bill has become due.—*Dayley*, 3 Ed. 125; the Three Days mentioned in the Text are evidently the ordinary Days of Grace.

(3) This Notice is undoubtedly not sufficient to entitle the Party to recover. The precise Time within which Notice must be given is not very accurately settled—but in no Case is it sufficient, unless given the Day after that of the Bill being dishonoured, or of receiving Notice thereof.

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9 & 10 W. III.
c. 17.

Bill of Bills were protested; for which Protest shall be paid a Sum not exceeding the Sum of Sixpence; and in Default or Neglect of such Protest made and sent, or due Notice given within the Days before limited, the Person so failing or neglecting thereof, is and shall be liable to all Costs, (4) Damages, and Interest, which do and shall accrue thereby.

Bill lost or mis-
carried, Drawer to
give notice.

III. Provided nevertheless, That in case any such inland Bill or Bills of Exchange shall happen to be lost or miscarried within the Time before limited for Payment of the same, then the Drawer of the said Bill or Bills is and shall be obliged to give another Bill or Bills of the same Tenour with those first given, the Person or Persons to whom they are and shall be so delivered giving Security if demanded, to the said Drawer, to indemnify him against all Persons whatsoever, in case the said Bill or Bills of Exchange so alleged to be lost or miscarried, shall be found again. (5)

(4) These Costs are only the Costs of protesting—not the legal Costs of an Action, which are recovered of course. Protest of an inland Bill is only necessary for the Purpose of recovering Interest and Expenses.

(5) See *Walmesley v. Child*, 1 Vesey, sen. 341—2 and *Goodway*, 6 Ves. 812. *Person v. Hutchinson*, 2 Comp. N.P. 211.

No. 2.

3 & 4 Anne, c. 5. An Act for giving like Remedy upon Promissory Notes, as is now used upon Bills of Exchange, and for the better Payment of Inland Bills of Exchange.

3 & 4 Anne, c. 9.

See 1 Bur. 207.
This Act (be-
ing for the Benefit
of Commerce) is li-
berally construed
3 Wils. 1.

WHEREAS it is hereby held, That Notes in Writing, signed by the Party who makes the same, whereby such Party promises to pay unto any other Person, or his Order, any Sum of Money therein mentioned, are not assignable or indorsable over, within the Custom of Merchants, to any other Person; and that such Person to whom the Sum of Money mentioned in such Note is payable, cannot maintain an Action, by the Custom of Merchants, against the Person who first made and signed the same; and that any Person to whom such Note should be assigned, indorsed, or made payable, could not, within the said Custom of Merchants, maintain an Action upon such Note against the Person who first drew and signed the same. Therefore, to the intent to encourage Trade and Commerce, which will be much advanced, if such Notes shall have the same Effect as inland Bills of Exchange, and shall be negotiated in like Manner, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Notes in Writing, that after the first Day of May, in the Year of our Lord One Thousand Seven Hundred and Five, shall be made and signed by any Person or Persons, Body Politick or Corporate, or by the Servant or Agent of any Corporation, Banker, Goldsmith, Merchant, or Trader, who is usually entrusted by him, her, or them, to sign such Promissory Notes for him, her, or them, whereby such Person or Persons, Body Politick and Corporate, his, her, or their Servant or Agent as aforesaid, doth or shall promise to pay to any other Person or Persons, Body Politick and Corporate, his, her, or their Order or unto Bearer, any Sum of Money mentioned in such Note, shall be

Promissory Notes may be assigned or indorsed, and Action maintained thereon as on Inland Bills of Exchange.

taken and construed to be, by virtue thereof, due and payable to any such Person or Persons, Body Politick and Corporate, to whom the same is made payable; and also every such Note payable to any Person or Persons, Body Politick and Corporate, his, her, or their Order, shall be assignable or indorsable over, in the same Manner, as inland Bills of Exchange are or may be, according to the Custom of Merchants; and that the Person or Persons, Body Politick and Corporate, to whom such Sum of Money is or shall be by such Note made payable, shall and may maintain an Action for the same, in such Manner as he, she, or they might do, upon any inland Bill of Exchange, made or drawn according to the Custom of Merchants, against the Person or Persons, Body Politick and Corporate, who, or whose Servant or Agent as aforesaid, signed the same; and that any Person or Persons, Body Politick and Corporate, to whom such Note that is payable to any Person or Persons, Body Politick and Corporate, his, her, or their Order, is indorsed or assigned, or the Money therein mentioned ordered to be paid by Indorsement thereon, shall and may maintain his, her, or their Action for such Sum of Money, either against the Person or Persons, Body Politick and Corporate, who, or whose Servant or Agent as aforesaid, signed such Note, or against any of the Persons that indorsed the same, in like Manner as in Cases of inland Bills of Exchange: (1) And in every such Action the Plaintiff or Plaintiffs shall recover his, her, or their Damages and Costs of Suit; and if such Plaintiff or Plaintiffs shall be nonsuited, or a Verdict be given against him, her, or them, the Defendant or Defendants shall recover his, her, or their Costs against the Plaintiff or Plaintiffs; and every such Plaintiff or Plaintiffs, Defendant or Defendants, respectively recovering, may sue out Execution for such Damages and Costs by *Capias*, *Fieri facias*, or *Elegit*.

No. 2.
1 & 4 Anne, c. 9.

Plaintiff or De-
fendant may reco-
ver Costs.

II. And be it further enacted by the Authority aforesaid, That all and every such Actions shall be commenced, sued and brought within such Time as is appointed for commencing or suing Actions upon the Case, by the Statute made in the one and twentieth Year of the Reign of King JAMES the First, intituled, *An Act for Limitation of Actions, and for avoiding of Suits in Law*:

How Actions shall
be brought.
21 Jac. 1. c. 16.

III. Provided, That no Body Politick or Corporate shall have Power, by virtue of this Act, to issue or give out any Notes, by themselves or their Servants, other than such as they might have issued, if this Act had never been made.

Proviso against
giving out Notes.

IV. And whereas by an Act of Parliament made in the ninth Year of the Reign of his late Majesty King WILLIAM the Third, intituled, *An Act for the better Payment of inland Bills of Exchange*, it is among other Things, enacted, That from and after Presentation and Acceptance of the said Bill or Bills of Exchange, (which Acceptance shall be by the underwriting the same under the Party's Hand so accepting) and after the Expiration of three Days after the said Bill or Bills shall become due, the Party to whom the said Bill or Bills are made payable, his Servant, Agent, or Assigns, may, and shall cause the same Bill or Bills to be protested in Manner as in the said Act is enacted: And whereas by there being no Provision made therein for protesting such Bill or Bills, in case the Party, on whom the same are or shall be drawn, refuse to accept the same, by underwriting the same under his Hand, all Merchants and others do refuse to underwrite such Bill or Bills, or make any other

D & 10 W. III
c. 11.

(1) As to the Affinity between Bills of Exchange and Promissory Notes, see *Hughes v. Anderson*, 2 Bur. 669—*Brown v. Harraden*, 4 T. R. 148—*Carlow v. Fauquet*, 5 T. R. 488.

No. 2.
3 & 4 Anne, c. 9

Party refusing
to underwrite Bill
of Exchange, such
Bill may be pro-
tested for Non-
acceptance.

' than a Promissory Acceptance, by which Means the Effect and good Intent of the said Act in that Behalf is wholly evaded, and no Bill or Bills can be protested before or for want of such Acceptance by ' underwriting the same as aforesaid.' For Remedy whereof he it enacted by the Authority aforesaid, That from and after the first Day of May, which shall be in the Year of our Lord One Thousand Seven Hundred and Five, in case, upon presenting of any such Bill or Bills of Exchange, the Party or Parties, on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same as aforesaid, the Party to whom the said Bill or Bills are made payable, his Servant, Agent, or Assigns, may and shall cause the said Bill or Bills to be protested for Non-acceptance, as in case of foreign Bills of Exchange; any Thing in the said Act or any other Law to the contrary notwithstanding: For which Protest there shall be paid two Shillings, and no more.

No Acceptance
of Inland Bills of
Exchange to be
sufficient, unless
the same be under-
written nor Draw-
er thereof liable to
Costs, &c

V. Provided always, That from and after said first Day of May, no Acceptance of any such inland Bill of Exchange shall be sufficient to charge any Person whatsoever, unless the same be underwritten or indorsed in Writing thereupon, (s) and if such Bill be not accepted by such Underwriting, or Indorsement in Writing, no Drawer of any such inland Bill shall be liable to pay any Costs, Damages, or Interest thereupon, unless such Protest be made for Non-acceptance thereof, and within fourteen Days after such Protest, the same be sent, or otherwise Notice thereof be given to the Party from whom such Bill was received, or left in Writing at the Place of his or her usual Abode; and if such Bill be accepted, and not paid before the Expiration of three Days after the said Bill shall become due and payable, then no Drawer of such Bill shall be compellable to pay any Costs, Damages, or Interest thereupon, unless a Protest be made and sent, or Notice thereof be given, in Manner and Form above-mentioned. Nevertheless, every Drawer of such Bill shall be liable to make Payment of Costs, Damages, and Interest upon such inland Bill, if any one Protest be made of Non-acceptance, or Non-payment thereof, and Notice thereof be sent, given or left as aforesaid.

No Protest ne-
cessary for 20 l
Interest unless
the Bill be drawn
for 20 l or up-
wards.

VI. Provided, That no such Protest shall be necessary, either for Non-acceptance or Non-payment of any inland Bill of Exchange, unless the Value be acknowledged and expressed in such Bill to be received, and unless such Bill be drawn for the Payment of twenty Pounds Sterling or upwards; and that the Protest, hereby required for Non-acceptance, shall be made by such Persons as are appointed by the said recited Statute to protest inland Bills of Exchange for Non-payment thereof.

By whom Protest
shall be made

VII. And it further enacted, That from and after the said first Day of May, no Person doth accept any such Bill of Exchange, for and in Satisfaction of any former Debt, or Sum of Money formerly due unto him, like the same shall be accounted and esteemed a full and complete Payment of such Debt, if such Person, accepting of any such Bill for his Debt, doth not take his due Course to obtain Payment thereof, by underwriting to get the same accepted and paid, and make his Protest as aforesaid, either for Non-acceptance, or Non-payment thereof.

Acceptance of Bill
esteemed a full
Payment of Debt.

Provido.

VIII. Provided, That nothing herein contained shall extend to discharge of any Remedy, that any Person may have against the Drawer, Acceptance, or Indorser of such Bill.

(s) This Provision, although very generally expressed, is held only to affect the Right to Damages, &c. and not to prevent the Liability of a Person giving a verbal or collateral Acceptance to the Payment of the Sum specified in the Bill.

IX. And be it further enacted by the Authority aforesaid, That this Act shall continue and be in Force for the Space of three Years, from the said first Day of May, and from thence to the End of the next Session of Parliament, and no longer. [Made perpetual by 7 Annæ, c. 25, s. 3.]

No. 3.
3 & 4 Anne, c. 9.
Act to continue three Years.

No. 3.

17 George III. c. 30.—An Act for further restraining the Negotiation of Promissory Notes, and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England.(1)

WHEREAS by a certain Act of Parliament, passed in the fifteenth(8) Year of the Reign of his present Majesty, intituled, *An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England, all negotiable Promissory or other Notes, Bills of Exchange, or Draughts, or Undertakings in Writing, for any Sum of Money less than the Sum of twenty Shillings in the Whole, and issued after the twenty-fourth Day of June One Thousand Seven Hundred and Seventy-five, were made void, and the publishing or uttering and negotiating of any such Notes, Bills, Draughts, or Undertakings, for a less Sum than twenty Shillings, or on which less than that Sum should be due, was, by the said Act, restrained under certain Penalties or Forfeitures therein mentioned; and all such Notes, Bills of Exchange, Draughts, or Undertakings in Writing, as had issued before the said twenty-fourth Day of June, were made payable upon Demand, and were directed to be recovered in such Manner as is therein also mentioned; And whereas the said Act hath been attended with very salutary Effects, and in case the Provisions therein contained were extended to a further Sum (but yet without Prejudice to the Convenience arising to the Public from the Negotiation of Promissory Notes and Inland Bills of Exchange for the Remittance of Money in Discharge of any Balance of Account or other Debt), the good Purposes of the said Act would be further advanced; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Promissory or other Notes, Bills of Exchange, or Draughts, or Undertakings in Writing, being negotiable or transferrable, for the Payment of twenty Shillings, or any Sum of Money above that Sum and less than five Pounds; or on which twenty Shillings, or above that Sum, and less than five Pounds, shall remain undischarged, and which shall be issued, within that Part of Great Britain called England, at any Time after the first Day of January One Thousand Seven Hundred and Seventy-eight, shall specify the Names and Places of Abode of the Persons respectively to whom, or to whose Order, the same shall be made payable; and shall bear Date before or at the Time of drawing or issuing thereof, and not on any Day subsequent thereto; and shall be made payable within the Space of twenty-one Days next after the Day of the Date thereof;*

All negotiable Promissory Notes, &c. for 20s. and less than 5l. shall specify the Names, &c. of the Persons to whom payable.

(1) This Act has been superseded by various Acts, from 37 Geo. 3, c. 61, to 55 Geo. 3, c. 30, which continued the Suspension until the 25th of March, 1816. If there is any further Continuance, by any Statute of 56 Geo. 3, it will be noticed in the Table of Contents.

(2) Repealed by 43 Geo. 3, c. 88. post No. 5.

No. 3.
27 Geo. III. c. 30.

Signing of every
such Note, and
Indorsement, to be
attested by
W

and shall not be transferrable or negotiable after the Time thereby limited for Payment thereof; and that every Indorsement to be made thereon shall be made before the Expiration of that Time, and to bear Date at or not before the Time of making thereof; and shall specify the Name and Place of the Abode of the Person or Persons to whom, or to whose Order, the Money contained in every such Note, Bill, Draught, or Undertaking, is to be paid; and that the signing of every such Note, Bill, Draught, or Undertaking, and also of every such Indorsement, shall be attested by one subscribing Witness at the least; and which said Notes, Bills of Exchange, or Draughts, or Undertakings in Writing, may be made or drawn in Words to the Purport or Effect as set out in the Schedule hereunto annexed, No: I. and II.: And that all Promissory or other Notes, Bills of Exchange, or Draughts, or Undertakings in Writing, being negotiable or transferrable, for the Payment of twenty Shillings, or any Sum of Money above that Sum, and less than five Pounds; or in which twenty Shillings, or above that Sum, and less than five Pounds, shall remain undischarged, and which shall be issued, within that Part of Great Britain called England, at any Time after the said first Day of January One Thousand Seven Hundred and Seventy-eight, in any other Manner than as aforesaid, and also every Indorsement on any such Note, Bill, Draught, or Undertaking, to be negotiated under this Act, other than as aforesaid, shall, and the same are hereby declared to be, absolutely void; any Law, Statute, Usage, or Custom to the contrary thereof in any-wise notwithstanding.

II. And be it further enacted by the Authority aforesaid, That the publishing, uttering, or negotiating, within that Part of Great Britain called England, of any Promissory or other Note, Bill of Exchange, Draught, or Undertaking in Writing, being negotiable or transferrable, for twenty Shillings, or above that Sum, and less than five Pounds, or on which twenty Shillings, or above that Sum, and less than five Pounds, shall remain undischarged, and issued or made in any other Manner than Notes, Bills, Draughts, or Undertakings, hereby permitted to be published or negotiated as aforesaid; and also the negotiating of any of such last-mentioned Notes, Bills, Draughts, or Undertakings, after the Time appointed for Payment thereof, or before that Time in any other Manner than as aforesaid, by any Act, Contrivance, or Means whatsoever, from and after the said first Day of January One Thousand Seven Hundred and Seventy-eight, shall be, and the same is hereby declared to be, prohibited or restrained, under the like Penalties or Forfeitures, and to be recovered and applied in like Manner as by the said Act is directed, with respect to the uttering or publishing or negotiating of Notes, Bills of Exchange, Draughts, or Undertakings in Writing, for any Sum of Money not less than the Sum of twenty Shillings, or on which less than that Sum should be due.

AN act for the
Promissory Notes,
etc. betw. eu. Sta.
and St. which sh.
be issued, betw.
Jan. 1. 1777.
be payable on De-
mand.

III. And be it further enacted by the Authority aforesaid, That, from and immediately after the passing of this Act, all Promissory or other Notes, Bills of Exchange, Draughts, or Undertakings in Writing, for the Payment of any greater Sum of Money than twenty Shillings, and less than the Sum of five Pounds, or on which twenty Shillings, and less than the Sum of five Pounds, shall remain undischarged, and being negotiable or transferrable, as shall be issued before the said first Day of January One Thousand Seven Hundred and Seventy-eight, shall be, and the same are hereby declared, and adjudged payable, within that Part of Great Britain called England, on Demand, any Terms, Restrictions, or Conditions therein contained to the contrary thereof notwithstanding; and shall be recoverable in such Manner, or by the like Means, as is or are directed in or by the said Act with

respect to Notes, Bills of Exchange, or Draughts, or Undertakings in Writing therein mentioned to have issued previous to the said twenty-fourth Day of *June* One Thousand Seven Hundred and Seventy-five; and that all and every other the Powers, Provisions, Limitations, Restrictions, Penalties, Clauses, Matters and Things whatsoever in the said former Act contained with respect thereto, and also with respect to all such Notes, Bills of Exchange, Draughts, or Undertakings in Writing, issued after the said twenty-fourth Day of *June* One Thousand Seven Hundred and Seventy-five, shall be, and the same are hereby declared to be in force, within that Part of *Great Britain* called *England*, as to all Notes, Bills of Exchange, or Draughts, or Undertakings in Writing, for twenty Shillings, or any greater Sum and less than the Sum of five Pounds, or on which twenty Shillings, or above that Sum and less than five Pounds, shall remain undischarged, issued after the said first Day of *January* One Thousand Seven Hundred and Seventy-eight, and previous thereto respectively, and in like Manner as if the same respectively had been the Object of the said Act at the Time of making thereof, save so far as the same or any of them are altered or varied by this present Act.

IV And be it further enacted by the Authority aforesaid, That the said former, and also this present Act, shall continue in force, not only for the Residue of the Term of five Years in the said former Act mentioned, and from thence to the End of the then next Session of Parliament, but also for the farther Term of five Years, and from thence to the End of the then next Session of Parliament.

Continuance of
this, and former
Acts

Made perpetual
by 27 G. 3, c. 16.

SCHEDULE.

No. I.

‘ TWENTY-ONE ^[Place] Days ^[Date] after Date, I promise to pay to ^[Month] ^[Year] *A. B.* of
‘ ^[Place] or his Order, the Sum of
‘ for Value received by
‘ Witness, *E. F.* *C. D.*

And the Indorsement, toties quoties.

‘ Pay the Contents to *G. H.* of ^[Day] ^[Month] ^[Year] ^[Place] or his Order.
‘ Witness, *J. K.* *A. B.*

No. II.

‘ TWENTY-ONE ^[Place] Days ^[Day] after Date, pay to ^[Month] ^[Year] ^[Place] *A. B.* of
‘ or his Order, the Sum of Value received,
‘ as advised by
‘ To *E. F.* of ^[Place] *C. D.*
‘ Witness, *G. H.*

And the Indorsement, toties quoties.

‘ Pay the Contents to *J. K.* of ^[Day] ^[Month] ^[Year] ^[Place] or his Order.
‘ Witness, *L. M.* *A. B.*

No. 4.

40 George III. c. 42.—An Act for the better Observance of *Good Friday* in certain Cases therein mentioned.

[16th May, 1800.]

40 Geo. III. c. 42.

Where Bills of Exchange & Promissory Notes be-

WHEREAS the Bank of *England* and Bankers in general are often under the Necessity of transacting Business on *Good Friday*, for the Purpose of receiving Money for Bills of Exchange and Promissory Notes becoming payable on that Day, in consequence whereof many Persons are prevented observing the same with due Solemnity; now, therefore, for the better Observance of *Good Friday*, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That where Bills of Exchange and Promissory Notes become due and payable on *Good Friday*, the same shall, from

and the Holders thereof may protest the same for Nonpayment on such preceding Day.

Non-payment on the Day preceding *Good Friday*, in like Manner as if the same had fallen due and become payable on the Day preceding *Good Friday*; and such Noting and Protests shall have the same Effect and Operation as Law as if such Bills and Promissory Notes had fallen due and become payable on the Day preceding *Good Friday*, in the same Manner as it usual in the Cases of Bills of Exchange and Promissory Notes coming due on the Day before any Lord's Day, commonly called *Sunday*, and before the Feast of the Nativity or Birth of our Lord, commonly called *Christmas Day*.

No. 5.

48 George III. c. 88.—An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, in *England*. [23d June, 1808.]

48 Geo. III. c. 88.

15 Geo. III. c. 31, repealed.

WHEREAS various Notes, Bills of Exchange, and Drafts for Money for very small Sums have for some Time past been circulated or negotiated in lieu of Cash, within that Part of *Great Britain* called *England*, to the great Prejudice of Trade and publick Credit, and many of such Bills and Drafts being payable under certain Terms and Restrictions which the poorer Sort of Manufacturers, Artificers, Labourers, and others cannot comply with, otherwise than by being subject to great Extortion and Abuse: And whereas an Act, passed in the Fifteenth Year of the Reign of his present Majesty, intituled, *An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain, called England*, for preventing the circulating such Notes and Drafts: And whereas Doubts have arisen as to the Power of Justices of the Peace to hear and determine Offences under the said Act; and it is therefore expedient that more effectual Provisions should be made for enforcing the Provisions of the said Act; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parlia-

ment assembled, and by the Authority of the same, That from and after the passing of this Act, the said recited Act shall be and the same is hereby repealed. No. 5. 48 Geo. III. c. 33.

II. And be it further enacted, That all Promissory or other Notes, Bills of Exchange or Drafts, or Undertakings in Writing, being negotiable or transferable for the Payment of any Sum or Sums of Money, or any Orders, Notes or Undertakings in Writing, being negotiable or transferable for the Delivery of any Goods, specifying their Value in Money, less than the Sum of Twenty Shillings in the Whole, heretofore made or issued, or which shall hereafter be made or issued, shall from and after the First Day of *October* One Thousand Eight Hundred and Eight, be and the same are hereby declared to be absolutely void and of no Effect; any Law, Statute, Usage or Custom, to the contrary thereof in anywise notwithstanding.

III. And be it further enacted, That if any Person or Persons shall after the First Day of July One Thousand Eight Hundred and Eight by any Art, Device, or Means whatsoever, publish or utter any such Notes, Bills, Drafts, or Engagements as aforesaid, for a less Sum than Twenty Shillings, or on which less than the Sum of Twenty Shillings shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same, every such Person shall forfeit and pay, for every such Offence, any Sum not exceeding Twenty Pounds, nor less than Five Pounds, at the Discretion of the Justice of the Peace who shall hear and determine such Offence.

Penalty on Persons uttering such Notes, &c. to sh.

IV. And be it further enacted, That it shall be lawful for any Justice or Justices of the Peace, acting for the County, Riding, City, or Place within which any Offence against this Act shall be committed, to hear and determine the same in a summary Way, at any Time within Twenty Days after such Offence shall have been committed; and such Justice or Justices, upon any Information exhibited or Complaint made upon Oath in that Behalf, shall summon the Party accused, and also the Witnesses on either Side, and shall examine into the Matter of Fact, and upon due Proof made thereof, either by the voluntary Confession of the Party or by the Oath of One or more credible Witness or Witnesses, or otherwise, (which Oath such Justice or Justices is or are hereby authorized to administer,) shall convict the Offender, and adjudge the Penalty for such Offence.

Justices may determine on such Offences within 20 Days.

V. And be it further enacted, That if any Person shall be summoned as a Witness to give Evidence before such Justice or Justices, either on the Part of the Prosecutor or the Person accused, and shall neglect or refuse to appear at the Time or Place to be for that Purpose appointed without a reasonable Excuse for such his Neglect or Refusal, to be allowed by such Justice or Justices, then such Person shall forfeit for every such Offence, the Sum of Forty Shillings, to be levied and paid in such Manner and by such Means as are directed for Recovery of other Penalties under this Act.

VI. And be it further enacted, That the Justice or Justices before whom any Offender shall be committed as aforesaid, shall cause the said Conviction to be made out, in the Manner and Form following; (that is to say,)

BE it remembered, That on the _____ Day of _____
in the Year of our Lord _____ Form of Conviction.
A. B. having appeared before me [or, us] One [or more] of his
Majesty's Justices of the Peace [as the Case may be] for the County,
Riding, City, or Place, [as the Case may be] and due Proof having
been made upon Oath by One or more credible Witness or Wit-
nesses, or by the Confession of the Party [as the Case may be] is
convicted of _____ [specifying the Offence].

No. 5. ' Given under my Hand and Seal [or, our Hands and Seals] the Day
 48 Geo. III. c. 88. ' aforesaid.'

Returnable to the
 Quarter Sessions

Which Conviction the said Justice or Justices shall cause to be returned to the then next General Quarter Sessions of the Peace of the County, Riding, City, or Place where such Conviction was made, to be filed by the Clerk of the Peace, to remain and be kept among the Records of such County, Riding, City, or Place.

Copies of Convic-
 tions.

VII. Provided always, and be it further enacted, That it shall be lawful for any Clerk of the Peace for any County, Riding, City, or Place, and he is hereby required, upon Application made to him by any Person or Persons for that Purpose, to cause a Copy or Copies of any Conviction or Convictions filed by him under the Directions of this Act, to be forthwith delivered to such Person or Persons upon Payment of One Shilling for every such Copy.

Levy and Ap-
 plication of Penal-
 ties.

VIII. And be it further enacted, That the pecuniary Penalties and Forfeitures hereby incurred and made payable upon any Conviction against this Act, shall be forthwith paid by the Person convicted, as follows: One Moiety of the Forfeiture to the Informer, and the other Moiety to the Poor of the Parish or Place where the Offence shall be committed; and in case such Person shall refuse or neglect to pay the same, or to give sufficient Security to the Satisfaction of such Justice or Justices to prosecute any Appeal against such Conviction, such Justice or Justices shall by Warrant under his or their Hand and Seal or Hands and Seals, cause the same to be levied by Distress and Sale of the Offender's Goods and Chattels, together with all Costs and Charges attending such Distress and Sale, returning the Overplus (if any) to the Owner; and which said Warrant of Distress the said Justice or Justices shall cause to be made out in the Manner and Form following; (that is to say.)

of the Writ-
 of Distress.

' To the Constable, Headborough, or Tythingman of

' **W**HEREAS *A. B.* of _____ in the County of _____
 ' is this Day convicted before me [or, us]
 ' One [or more] of his Majesty's Justices of the Peace [as the Case
 ' may be] for the County of _____ [or, for the
 ' Riding of the County of York, or for the Town, Liberty, or District
 ' of _____ [as the Case may be] upon the Oath of
 ' _____ or _____ a credible Witness or
 ' Witnesses [or, by Confession of the Party, as the Case may be]
 ' for that the said *A. B.* hath [here set forth the Offence] contrary to
 ' the Statute in that Case made and provided, by reason whereof the
 ' said *A. B.* hath forfeited the Sum of _____ to be
 ' distributed as herein is mentioned, which he hath refused to pay:
 ' These are therefore, in his Majesty's Name, to command you to levy
 ' the said Sum of _____ by Distress of the Goods and
 ' Chattels of him the said *A. B.* and if within the Space of Five Days
 ' next after such Distress by you taken, the said Sum, together with
 ' the reasonable Charges of taking the same, shall not be paid, then
 ' that you do sell the said Goods and Chattels so by you distrained,
 ' and out of the Money arising by such Sale, that you do pay One-half
 ' of the said Sum of _____ to _____ of
 ' _____ who informed me [or, us, as the Case may be]
 ' of the said Offence, and the other Half of the said Sum of _____
 ' to the Overseer of the Poor of the Parish,
 ' Township, or Place where the Offence was committed, to be
 ' employed for the Benefit of such Poor, returning the Overplus
 ' (if any) upon demand, to the said *A. B.* the reasonable Charges of
 ' taking, keeping, and selling the said Distress being first deducted;

‘ and if sufficient Distress cannot be found of the Goods and Chattels
 ‘ of the said *A. B.* whereon to levy the said Sum of
 ‘ that then you certify the same to me, [*or, us, as the Case may be*]
 ‘ together with this Warrant. Given under my Hand and Seal [*or,*
 ‘ our Hands and Seals] the Day of
 ‘ in the Year of our Lord

No. 5.
 40 Geo. III. c. 88.

IX. And be it further enacted, That it shall be lawful for such Justice or Justices to order such Offender to be detained in safe Custody until Return may conveniently be had and made to such Warrant of Distress, unless the Party so convicted shall give sufficient Security, to the Satisfaction of such Justice or Justices, for his Appearance before the said Justice or Justices on such Day as shall be appointed by the said Justice or Justices for the Day of the Return of the said Warrant or Distress (such Day not exceeding Five Days from the taking of such Security); which Security the said Justice or Justices is and are hereby empowered to take by Way of Recognizance or otherwise.

Security for Ap-
 pearance of Pa-
 on R. of 1
 Warrant

X. And be it further enacted, That if upon such Return no sufficient Distress can be had, then and in such Case the said Justice or Justices shall and may commit such Offender to the Common Gaol or House of Correction of the County, Riding, Division, or Place where the Offence shall be committed, for the Space of Three Calendar Months, unless the Money forfeited shall be sooner paid, or unless or until such Offender thinking him or herself aggrieved by such Conviction, shall give Notice to the Informer that he or she intends to appeal to the Justices of the Peace at the next General Quarter Sessions of the Peace to be holden for the County, Riding, or Place wherein the Offence shall be committed, and shall enter into Recognizance before some Justice or Justices, with two sufficient Sureties conditioned to try such Appeal, and to abide the Order of and pay such Costs as shall be awarded by the Justices at such Quarter Sessions (which Notice of Appeal, being not less than Eight Days before the Trial thereof, such Person so aggrieved is hereby empowered to give); and the said Justices at such Sessions, upon due Proof of such Notice being given as aforesaid, and of the entering into such Recognizance, shall hear and finally determine the Causes and Matters of such Appeal in a summary Way, and award such Costs to the Parties appealing or appealed against as they the said Justices shall think proper; and the Determination of such Quarter Session shall be final, binding, and conclusive, to all Intents and Purposes.

Offenders may
 be committed to
 Gaol or House of
 Correction.

XI. And be it further enacted, That no Person shall be disabled from being a Witness in any Prosecution for any Offence against this Act, by reason of his being an Inhabitant of the Parish wherein such Offence was committed.

Parishioners may
 be Witnesses.

XII. Provided always, That no Proceedings to be had, touching the Conviction or Convictions of any Offender or Offenders against this Act, shall be quashed for Want of Form, or be removed by Writ of *Certiorari* or any other Writ or Process whatsoever, into any of his Majesty's Courts of Record at *Westminster*.

Convictions not
 removable by Cer-
 tiorari.

XIII. And be it further enacted, That if any Action or Suit shall be commenced against any Person or Persons for any Thing done or acted in pursuance of this Act, then and in every such Case such Action or Suit shall be commenced or prosecuted within Three Calendar Months after the Fact committed, and not afterwards; and the same and every such Action or Suit shall be brought within the County where the Fact was committed, and not elsewhere; and the Defendant or Defendants in every such Action or Suit shall and may plead the General Issue, and give this Act and the special Matter in

Limitation of
 Actions.

Venue.

- No. 5. Evidence at any Trial to be had thereupon, and that the same was
48 Geo III. c. 88. done in pursuance and by the Authority of this Act ; and if the same
shall appear to have been so done, or if any such Action or Suit shall
be brought after the Time limited for bringing the same, or be brought
or laid in any other Place than as aforementioned, then the Jury shall
find for the Defendant or Defendants ; or if the Plaintiff or Plaintiffs
shall become nonsuit, or discontinue his, her, or their Action after the
Defendant or Defendants shall have appeared, or if upon Demurrer
Judgment shall be given against the Plaintiff or Plaintiffs, the Defendant
or Defendants shall and may recover Treble Costs, and have the like
Treble Costs. Remedy for the Recovery hereof as any Defendant or Defendants hath
or have in any other Cases by Law.

PART III. CLASS V.

USURY.*

No. 1.

37 Henry VIII. c. 9.—A Bill against Usury.

‘ **W**HERE before this Time divers and sundry Acts, Statutes and
 ‘ Laws have been ordained, had and made within this Realm,
 ‘ for the avoiding and Punishment of Usury, being a Thing unlawful,
 ‘ and of other corrupt Bargains, Shifts and Chevisances, which Acts,

37 Hen. VIII. c. 9.
 How Offenders
 in Usury shall be
 punished.

* In the following Note respecting the Law of Usury, I shall frequently avail myself of Mr. Plowden's Treatise upon the Subject, although I may materially differ from him in my Opinion of the Wisdom and Policy of the Views upon which that System of Laws is founded; conceiving that the general Principles, so ably and satisfactorily established by Adam Smith, in Favour of leaving to contracting Parties the Care of their own Interest, are equally applicable to this Subject as to any other—so far at least as regards the Question of the general Interest of the Community, independently of the Advantages which may result from the Facility of obtaining Money for the Exigencies of the Public, by enabling the Government to obtain the requisite Loans, without any Impediment from those Restraints which are supposed to be a Benefit and Protection to particular Individuals—and that the Instances of Extortion and Oppression, which would occasionally result from removing the existing Restraints upon the Freedom of Contract in the Loan of Money, would be only casual Exceptions to the general Benefit resulting from the Adoption of such a System. Much of the Prejudice which has existed against the receiving a Compensation for the Loan of Money or other Articles, of which the Use is only in the Consumption, arises from a mistaken View of the Authority of the Scriptures upon the Subject, and from drawing general Inferences from particular Premises and from Ordinances applicable to the peculiar Situation of the Jewish People—and even in modern Times, the Existence of any Contracts for that Purpose has been reprobated in the greater Part of Europe, as a Violation of those Principles of Christian Charity and Benevolence which inculcate the Performance of good Offices without any Object of personal Benefit or Remuneration. But the Experience of all Ages has shewn, that the Sacrifice of individual Interest, to the Purposes of pure disinterested Benevolence, is a Principle of very partial and limited Operation, and that the general Intercourse of Society can only be maintained by the mutual interchange of Services, according to the respective Powers and Exigencies of the several Members of the Community; and although the rendering Assistance to another, with the View of obtaining a full and adequate Remuneration, has no Claim to be regarded as a Virtue, it certainly by no Means follows, that it is therefore to be reprobated as a Crime. It is clear, that the true Question, as to prohibiting or regulating the Compensation to be given for the temporary Use of Money, considered in its general Effects, is not between the obtaining the Benefit of such Assistance gratuitously, or upon more favourable Terms, and the obtaining it for a particular Equivalent; but between the obtaining it upon such Equivalent as the Lender may deem more advantageous than a

On the general
 Nature and Por-
 ty of the Law of
 Usury.

No. 1.
37 Hen. VIII. c. 9.

' Statutes and Laws been so obscure and dark in Sentences, Words
' and Terms, and upon the same so many Doubts, Ambiguities and
' Questions have arisen and grown, and the same Acts, Statutes and
' Laws been of so little Force or Effect, that by reason thereof little or

different Application of his Property, and the suffering the Loss and Inconvenience which may arise from its being totally withheld—and there are very few Writers who would now contend for the absolute Prohibition of such a Contract, however much they may approve of its being subjected to particular Restraints and Regulations.*

The very acute and masterly Disquisitions of Mr. Bentham, (not the less profound and instructive for the lively and amusing Manner in which they are conducted,) have greatly contributed to remove the Impressions which were previously very general upon the Subject—and, so far as my Intercourse with Society will enable me to form a Judgment, an Accordance with his Sentiments, in Favour of an unrestricted Commerce with Regard to the Interest of Money, has become very prevalent, although certainly very far from universal.

A very opposite Sentiment is manifested by Lord Redesdale, in several of his Judgments, as Lord Chancellor of Ireland. In the Case of *Molloy v. Irwin*, 1 Sch. & L. 312, he expresses himself as follows:—"I consider that Transactions of this Nature are set aside by Courts of Equity, not with a View to the Individual, but on public Grounds, in Order to render the lending of Money generally beneficial, by facilitating the Means of procuring it on reasonable Terms. This is the View in which the Laws against Usury are to be taken, and the Principle on which they are to be supported, (particularly in a commercial Country,) against the Theories of Persons who have written on the Subject; otherwise there is no Reason why a Man should not make the most of his Money, as well as of any other Species of Property." And in a preceding Case, *Drew v. Power*, 1 Sch. & L. 182, his Lordship intimates the same Views upon the Subject, at greater Length, observing, that the true Reason on which the Legislature has said, that in Bargains for Money no more than a certain fixed Sum shall be taken, by Way of Interest for the Loan, is founded on great Principles of public Policy. First of all, it is more advantageous to the Public, that Persons who are in Possession of Money should use their own Industry in the Employment of their Money, than that they should sit idle and take the Benefit of it through the Industry of others, and therefore the Loan of Money at any large Rate of Interest has always been discouraged—and as a State becomes rich the Interest of Money is always diminished, with a View that a Man who sits idle shall receive as low a Rate of Interest as can induce him to lend to another. But if a Consideration of any Description beyond that Rate of Interest can be had, the Profit derived from that is just as injurious to the Public as if it were taken in the Shape of a Reservation of higher Interest; and therefore the Policy of the Law would be completely defeated, if Courts were not to be jealous of such Transactions as these, and were not to watch them with Severity, and be sure that they did not permit Persons, under Cover of ordinary Dealings between Man and Man, to obtain an Advantage beyond the legal Interest. If every Man could obtain, for the Loan of his Money, as high a Rate of Interest, without Hazard, as they do who employ it in Trade or Manufactures, which are hazardous Undertakings, no Man would employ his Money in such hazardous Undertakings—the most industrious of the People would be ground down by the Usurers; they would get the Profits of the Trade, and the enterprizing and industrious Trader would be ruined: one sees every Day, when Traders who have been in the Habit of borrowing become Bankrupts, how large a Share of their Property is swallowed up by Usurers."

* Mr. Barrington, after quoting the Observation of Tacitus, that amongst the Germans *semen agitare ignotum, ideoque magis servatur, quam si vetitum esset*, admits that the true Reason, probably, for its not prevailing amongst them, or our Ancestors, was that they had little or no personal Property, and those who have landed Estates have always been envious of the sudden Fortunes raised by Commerce, and the Improvement and Increase of personal Estates. Treatise on Treatise may be written to prove, that these Interests mutually support and strengthen each other; the Prejudice indeed may be somewhat lessened, but cannot be eradicated. He adds, that Sir Edward Pines, afterwards Baron Clinton, opposed a Bill drawn by Judge Brooke, and moved in the House of Lords, by saying, "Shew me a State without Usury, and I will shew you a State without Trade."—Obs. on Statute of Merton, ch. 5.

'no Punishment hath ensued to the Offenders of the same, but rather
'hath encouraged them to use the same:' For Reformation whereof, No. 1.
37 Hen. VIII. c. 9.
be it enacted by the King our Sovereign Lord, by the Assent of the
Lords Spiritual and Temporal, and of the Commons, in this present

It is manifest how completely all these Observations take it for granted, that there is a certain Quantity of Money which must necessarily be lent out at Interest, and which the Borrowers would certainly obtain at a lower Interest, if the Lenders were restricted from advancing it at a higher—how completely they take it for granted, that Persons exercising their own Judgment would be ground down and oppressed, by Contracts which they voluntarily enter into with their Eyes open, for the Accommodation of Money, to which they have no more Claim than to any other Property of the Person advancing it. It is very true, that as Countries advance in Opulence, the Rate of Interest usually diminishes,† but this is not so much the Effect of Law as of the Nature and Order of Things, by which the surplus Money becoming greater in Proportion to the Demand for its temporary Use, the Competition among Lenders reduces the Rate of Accommodation to Borrowers; and it is in this as in almost all the other Cases evident, that the Check upon the Motives of Supply is rather an Impediment to, than a Mean of facilitating the Acquisition. By the Statute 28th Henry VIII. c. 14, no French Wines are to be sold for more than Eightpence a Gallon; but Nobody can suppose, that the Quantity of Burgundy or Claret would be increased by carrying this Statute into Execution:—as little will the Loan of Money, for the Purposes of Commerce, be promoted, by restricting the Interest of it to Five per Cent. when, upon a free Competition of Contract between Borrower and Lender, it would purchase a much larger Sum—and if in the Nature of Things it might be had for Four, there would be no great practical Effect in restricting it to Five. The Mention of the Theories of Persons who have written upon the Subject is evidently intended to allude to the Work of Mr. Bentham—and it certainly is very fashionable, among those who think that political Economy cannot be too extensively made a Subject of positive Regulation, to apply the Appellation of Speculators or Theorists to others, who argue in Favour of the Utility of leaving Traffic of any given Description to its natural Course, and think that the Interests of

† This is not by any Means universally the Case, as modern Experience abundantly testifies. The Commerce and Opulence of the Country have been incalculably greater, since Money could not be generally obtained at Five per Cent. and upon indisputable Security, than they were when Loans at Four per Cent. were more general, and the receiving Five per Cent. was considered as an Advantage. The Difference arises from the great Value attached to the Command of ready Money, as an Instrument of Commerce, increasing in Proportion to the Extent and Magnitude of the commercial Engagements to which that Instrument can be applied; in the same Manner as the Rent of a House, in a busy Town, will exceed the Rent of one, similar in other Respects, in a remote and unfrequented Situation.

Another important Circumstance, in the Examination of this Subject, is the Magnitude of the National Debt; in itself no Doubt a considerable Evil, but which furnishes strong Evidence of the Resources of the Country, in which so large a Capital could be withdrawn from the ordinary Source of Employment, in order to be invested upon permanent Annuities, or more generally speaking, to be placed out at Interest. The great Advantage of this Mode of Investment, with Respect to Confidence in its Security, punctuality in obtaining the stipulated Payments, and Facility of Transfer, would extend to give it a decided Advantage over every other Mode of Investment, not connected with active Employment. But the Extent of the Property of this Description is so great, as necessarily to reduce the proportionate Number of Competitors for its Acquisition, and consequently to diminish the Price paid for its Acquisition; in other Words, to produce a higher Interest than would be otherwise obtained, in Case the Amount of funded Property bore a similar Proportion to the surplus Funds, which are applicable to the Acquisition of it; while the Grounds of Preference already adverted to, sufficiently account for the smaller Proportion of surplus Capital invested in private Securities, the Competition for the Benefit of such Capital as is so employed, and consequently for the advanced Rate of Interest, without furnishing any reasonable Ground for the Inference of a declining State of national Prosperity, in Respect of the useful Application of Capital employed in the Pursuit of industrious Enterprise; or for an unfavourable Comparison, in these Respects, contrary to the clear indisputable Testimony of historical Fact, with those Periods when a much smaller Rate of Interest was generally received. Considering, therefore, how extensively the Subject may be influenced by extrinsic Circumstances, it does not appear that there is such a Connection between a low and depressed State of Interest, and a general State of national Prosperity, as to render the legal Restriction of the Rate which would naturally follow the existing Exigencies of Society, and the consequent Direction of Capital employed into other Channels more advantageous to its Possessor, a beneficial and politic Exercise of legislative Authority.

No. 1.
37 Hen. VIII. c. 9.

All Statutes concerning Usury repealed.

Parliament assembled, and by the Authority of the same, That all and every the said Acts, Statutes and Laws heretofore made, of, for or concerning Usury, Shifts, corrupt Bargains and Chevisances, and every of them, and all Pains, Forfeitures and Penalties concerning the

Individuals may be safely confided to their own Judgment and Discretion. When it is admitted that, but for the Sake of giving a greater Facility to the Advance of Money upon reasonable Terms, there is no Reason why a Man shall not make the most of his Money as well as of any other Species of Property, it seems to be overlooked, that Men have various Ways of disposing of their Money besides the lending it upon Interest—and if that particular Mode is rendered less advantageous than it would naturally be, while many other Modes are left without Restraint, a very small Portion of Discernment is sufficient to enable the Party to exercise that Choice, in such an Application of his Property, which will be most productive of his own Advantage. And when it is remarked how large a Share of the Property of Bankrupts is swallowed up by Usurers, it is clear that the Observation cannot be intended to apply to the Case of Usury, in a legal Sense—for Creditors, whose Debts are really usurious, cannot have any Part of the Property at all—and the Fact, that Lenders of Money receive the greatest Proportion of the Property, only proves, that they are the Persons who sustain the greatest Proportion of the Loss.

But I admit, that any Observations upon this Subject, however correct, as applicable to the general Question of political Economy, are not likely to reach beyond Speculation—or to be attended with any practical Effect in the Alteration of the Law. The Conviction, that the State alone can receive pecuniary Assistance, unfettered by legal Protection, and that thereby all Competition is excluded from those whose mistaken Views of their own Advantage would induce them to go beyond the Pale of Protection which encompasses them, will in all Probability be a lasting Impediment to any material Change of System: and while the Law continues to subsist, and while, in the Language of Lord Mansfield, it is considered as affording to Persons a Protection against themselves, there can be but one Opinion upon the Propriety of carrying it fully into Execution, according to its real Object and Intention. †

Of the History
and Progress of
the Laws.

§. 2. It seems to be agreed, that at Common Law Usury was only lawful when practised by the Jews, and that when committed by Christians, it was an Offence cognizable in the Spiritual Court. The Extent of the Common Law upon this Subject, and its Continuance since the passing of the existing Statutes, are Subjects upon which a Difference of Opinion is entertained, and which, for any practical Purpose, it does not seem material to consider. Mr. Plowden's Treatise contains a clear and able Discussion upon these Questions, followed up by an interesting historical View of the State and Conditions of the Jews in England, wherein he cites from Roger Hoveden a very curious Ordinance of Richard I. for the regulating and registering the Loans by them.

† See some important Observations by Mr. Sugden, in a Pamphlet published in 1812, on the Annuity Act, and on raising the legal Rate of Interest, which are incorporated in the last Edition of his Treatise on Vendors and Purchasers. His Examination of the Comparison of the actual Rate of Interest usually taken when the Restriction was imposed, with the legal Rate which was considerably higher, and the Distinctions which he makes from that Circumstance, is very material. Since the above Note was completed, the Proposal for the Abolition of the Laws of Usury was introduced in Parliament, and met with a Reception by which I was agreeably disappointed. The Measure was unsuccessful, and was given up by the Proposer; but the Ground of Opposition was the Inconvenience which would arise from the sudden Relinquishment of the existing System of Law, an Inconvenience which I am perfectly ready to admit, and should therefore prefer seeing the Measure carried with adequate Provisions for the obviating such Inconvenience, which would but be done by fixing a distant Period, not less than two Years, for the Commencement of the actual Operation of the Measure, if adopted. But a great Progress was evidently made, when it appeared that of all the Opponents to the Measure, one only could be found who ventured to express an Approbation of the existing Law as depending upon its proper Merits. The Member referred to has published a Pamphlet in Favour of the Reduction of the present Rate of Interest, and is reported, in delivering his Sentiments in Parliament, to have undertaken to confute the Positions of Mr. Bentham, Point by Point. It did not however seem, that there was any Desire to call for the Performance of this Undertaking.

same, and every Part thereof, shall from henceforth be utterly void and of none Effect, to all Intents, Constructions and Purposes.

II. And be it further enacted by the Authority aforesaid, That no Person or Persons of what Estate, Degree or Condition soever he or

No. 1.

37 Hen. VIII. c. 9.

Selling of Wares and buying them again,

By the Statute of Merton, 30 Hen. VIII. c. 5, it was provided, that Usury should not run against any Being within Age, from the Time of the Death of his Ancestor until his lawful Age, which Statute it is agreed could only affect Jews. In the Reign of Edward I. but in what Year is uncertain, the Statute De Judaismo was passed, by which all Usury was absolutely prohibited.

In the 3rd of Henry VII. an Act was passed against Chevizance and Usury, (c. 5) prohibiting any Bargain by Way of dry Exchange, the Object of which was the Suppression of Bargains grounded in Usury, coloured by the Name of New Chevizance. This was followed by two other Acts of the same Reign; viz. An Act against Exchange and Re-exchanges, Chevizance, Usury, and Brokers—3 Henry VII. c. 6—and an Act for repealing the Act last mentioned, and making more effectual Provisions against Usury. By these Acts the Term *Usury* is applied to all Loans upon Interest, and which were prohibited under certain Penalties.

The Statute 37 Henry VIII. c. 9, (No. 1 of this Class,) repeals all preceding Acts, Statutes, and Laws respecting Usury, and is the Foundation of the subsisting Law upon the Subject.

This Act renders void all Bargains for taking more for giving Day of Payment than Ten per Cent. per Annum.

The Act against Usury, 3 & 6 Edward VI. c. 20, referring to the preceding Act of Henry VIII. states in the Preamble, "The which Act was not meant or intended for the Maintenance and Allowance of Usury, as divers Persons, blinded with inordinate Love of themselves, have and do mistake the same, but rather was made and witnessed against all Sorts and Kinds of Usury, as a Thing unlawful, as by the Title and Preamble of the said Act it doth plainly appear, and yet nevertheless the same was by the said Act permitted for the avoiding of more Evil and Inconvenience than before that Time was used and exercised:—But forasmuch as Usurie is by the Word of God utterly prohibited as a Vice most odious and detestable, as in divers Places of the Holy Scripture it is evident to be seen, which Thing by no godly Teachings and Persuasions can sink into the Hearts of divers greedy, uncharitable, and covetous Persons of this Realm, nor by any terrible Threatenings of God's Wrath and Vengeance that justly hangeth over this Realm, for the great and open Usurie therein daily used and practised, they will forsake such filthy Gain and Lucre, unless some temporal Punishment be provided and ordained in that Behalf." The Act, therefore, proceeding upon this accurate and judicious View of the Subject, prohibits, under Pain of Imprisonment, Fine, and Ransom, the taking of any Interest whatever. In the 13th of Elizabeth, (see No. 2 of this Class,) it was found, that this Act had not done so much Good as it was hoped it should, and therefore the Act was repealed, and the Prohibition of 37 Henry VIII. against taking more than Ten per Cent. was revived; the Vice of Usury still continuing the principal Object in Contemplation. The Preamble of 21 Jac. I. c. 17, [No. 3.] proceeds upon more moderate Views of the Subject, stating Reasons for deeming Ten per Cent. too high a Rate of Interest, and therefore reduces it to eight, and concludes its Enactments, as Paley observes, with the sage Provision, "that no Word in this Law contained shall be construed or expounded to allow the Practice of Usury, in Point of Religion or Conscience;" and the subsequent Acts of 13 Charles II. c. 13, and 12 Anne, c. 16, reducing the Rate of Interest successively to Six and from that to Five per Cent. where it has been left, leave all spiritual Views upon the Subject out of the Question, stating Reasons of public Policy, which, whether wise or otherwise, must be considered as evincing the Spirit and Principles, according to which the Construction of the subsisting Law is to be chiefly regulated.

§ 3. The Operation of the Statutes of Usury is either by avoiding the Contract, or by subjecting the Party taking usurious Interest to the Penalty of treble the principal Sum lent, and upon this Division of the Subject are founded the two established Principles:—1. That no Penalty is incurred by entering into an usurious Contract, without actually taking usurious Interest. 2. That a tract

On the Construction of the Law of Usury.

Part I. Of the Nature of the Contract.

No. 1.
37 Hen. VIII. c. 9.

they be, from and after the last Day of *January* next coming, shall by himself, Factor, Attorney, Servant or Deputy, sell his Merchandises or Wares to any Person or Persons, and within three Months next after, by himself, Factor, Attorney, Deputy, or by any other Person or

Contract, not usurious, is not rendered invalid by the Act of taking usurious Interest.

(a) As to the Necessity of there being a Loan.

The first Point to be regarded is the Kind of Contract upon which the legal Prohibition attaches; and the general Language of the Cases upon the Subject is, that in order to constitute Usury there must be a Loan; but certainly there are many Instances in which the Doctrine of Usury has been applied to Contracts that cannot, with much Propriety, be considered as Contracts of Loan; the Nature of which, so far as relates to the present Subject, consists in the supplying the Borrower with a certain Amount of Money or other consumable Property, for which a similar Amount is afterwards to be returned with or without an additional Compensation for the intermediate Use. This Contract in the Roman Law is known by the Name of *Mutuum*, as distinguished from the Loan of Commodities to be specifically returned; and which, under different Circumstances, is known by the Names of *Commodatum* or *Precarium*. The latter Species of Loan is by the French Law denominated *Prêt d'Usage*, the former *Prêt de Consommation*.

In *Spurrier v. Mayors*, 1 Ves. jun. 531, it was said, by Lord Commissioner Eyre, "Usury is taking more than the Law allows upon a Loan, or as I read it, for Forbearance of a Debt." Even this View of the Subject seems to be more confined than some of the undisputed Authorities respecting it would seem to require.

In a Case where Goulton was indebted to Flintoff, and Flintoff to Wilson, it was ruled, that Wilson was guilty of Usury by accepting a Premium for accepting Goulton as Debtor instead of Flintoff, and taking his Note for a Year, and that the Transaction was in Substance a Loan to Goulton—*Wade v. Wilson*, 1 Est. 195. Where a Surety for a Debt gave a Sum of Money for Forbearance of the Debt, the Transaction was ruled to be equivalent to a Loan—*Manners v. Postan*, 3 R. & P. 543.

(b) That no Colour can give effect to Usury.

It is agreed on all Hands, that if the real Object and Intention of the Parties is the Loan of Money, the legal Consequences of Usury will attach, whatever Form or Colour may be apparently given to the Transaction; the Intention is a Question of Fact to be determined by a Jury, upon a general View of the Circumstances of the Case. The Statute 37 Hen. VIII. refers to any corrupt Bargain, Loan, Exchange, Chevisance, Shifts, Interest of any Wares or Merchandizes, or other Thing whatsoever. The Statutes of Chas. II. and Anne refer more comprehensively to any Covin, Engine, or deceitful Conveyance. See upon this Subject, *Floyer v. Edwards*, Cowp. 112—*Murray v. Harding*, 2 Bl. Rep. 862, 5 Wils. 395—*Low v. Waller*, Doug. 736—*Barber v. Vansommer*, 1 Bro. C. C. 149—*Davison v. Pitt*, 1 Esp. N. P. 1; and as to requiring a Borrower, &c. to take Goods instead of Money, see *Pratt v. Willey*, 1 Esp. 40—*Davis v. Hardacre*, 2 Campb. 375—*Coombe v. Mills*, 2 Campb. 553.

(c) Of discounting Bills.

There are many Cases in which it is taken for granted that the deducting upon the Discount of a Bill of Exchange a larger Sum than the Amount of legal Interest for the Time the Bill has to run is usurious; but I conceive that these Cases are only considered applicable where the Party, from whom the Discount is taken, is to bear the Risk of the Solvency of the other Parties, and not where the Bill is purchased for a smaller Sum than the Amount (deducting intermediate Interest) at the Risk of the Purchaser; and that the same Doctrine may be applied to the bona fide Purchase of other Debts. In *Massa v. Dauling*, 2 Str. 1243, Lee, Ch. J. left it to the Jury to find whether the Transaction was to be deemed a Purchase or a Loan.

In *Lee v. Cass*, 1 Taunt. 511, a Person applied to by the Drawer to discount a Bill refused to do so, but on the Condition that he should be permitted to guarantee the Payment by the Acceptors at a certain Rate; there was no doubt of the Solvency of the Acceptors, and the only Reason for the Guarantee was the Refusal to discount the Bill on any other Terms. The Jury considering this to be a Shift to obtain a higher Rate of Interest than 5l. per cent. found a Verdict for the Plaintiff; and upon Motion for a new Trial, on

Persons to his Use and Behoof, buy the same Merchandises or Wares, or any Part or Parcel thereof, upon a lower Price, knowing them to be the same Wares or Merchandises that he before did so bargain and sell, upon the Pains and Forfeitures hereafter limited in this Estatute. No. 1.
37 Hen. VIII. c. 9.

the Ground that there was no Forbearance to the Drawer, in as much as the Contract of Guarantee protected him from Payment at all Events, the Court of C. B. held, that the Objection was not well founded, for clearly there was a Forbearance till the Bill became due, and the Guarantee would not protect the Drawer from the Payment of the Bill in the Hands of any other Holder, but would immediately give him a Right to recover against the Defendant; and that if the Objection were valid, it would give a complete Facility and Security to Usury. I should conceive, that the Grounds of this Case might be more effectually supported according to the Principle of legal Reasoning by resting it on the Finding of the Jury as to the real Nature of the Transaction than upon general Doctrine, that a *bona fide* Contract might not be made for the Purchase of an accepted Bill from the Drawer, with a Consideration for guaranteeing the Payment by the Acceptor.

A Discount of a Bill by a Country Banker to J. S. deducting Interest for the whole Time, although Part of the Payment at the request of J. S. was made in Bills payable at a future Date, was held not usurious, as the Surplus might be referable to Expence of Remittance, it being found by the Jury to be a fair Transaction in the usual Course of Business. See *Hammett v. Yea*, 1 B. & P. 144, in which the general Nature of the Subject is very ably discussed; but deducting the whole Interest upon one Bill, with an Agreement that another Bill which had Time to run should be taken as Cash, was held usurious—*Parr v. Eliason*, 1 East 92. Deducting Interest for the whole Time, and giving Bills at three Days Sight, without inquiring in what Shape the Purchaser choose to receive the Balance, was held usurious—per Lord Kenyon, at *N. P. Matthews v. Griffiths*, Peake 200; a Deduction of 7s. 6d. per Cent. for Commission by a Discounter put to no Expence or considerable Trouble, was held usurious—per Lord Ellenborough, 1 Camp. 445; a Commission of 5s. per Cent. taken by a Country Banker upon discounting Bills was holden not usurious—*Winch v. Fenn*, 2 T. R. 52; so *Haynes v. Fry*, where a reasonable Compensation was taken for the Trouble of sending Bills about for Acceptance and Payment; and see *Auriol v. Thomas*, 2 T. R. 52—*Ex parte Jones*, 17 Ves. 332, 15 Ves. 120—*Ex parte Henson*, 1 Mad. 112.

In *Barclay v. Walmsley*, 4 E. 65, it was ruled, that an Acceptor of a Bill of Exchange was not guilty of Usury for taking a Consideration of more than the Amount of legal Interest for paying it before it was due. It was argued, that it would be very easy to evade the Statutes of Usury by framing Securities in this Form; but Lord Ellenborough said, "that to constitute Usury there must either be a direct Loan and a taking of more than legal Interest for the Forbearance of Re-payment, or there must be some Device contrived for the Purpose of concealing or evading the Appearance of a Loan and Forbearance when in truth it was such; but here was no Loan or Forbearance, only a mere Anticipation of the Payment of a Debt by the Party before the Time, when by Law he would be called upon for it—that the Defendant had been guilty of a very improper Practice, but not of Usury."—It is difficult to discover wherein the alleged Impropriety consisted, there being no Suggestion of any undue Influence, or any other Objection to the Transaction, than that which was founded in the general Nature of the Transaction itself. Usury being now admitted to be a Matter of positive Law, and the real Value of the Use of Money being a Matter of as much Fluctuation as the Price of Stocks, or any other Commodity, the only Enquiry would seem to be, whether the Case is or is not within the Prohibition of the Law; that the Party who gave the Consideration had an adequate Motive of Interest or Convenience in doing so may without much Difficulty be taken for granted; and it is easy to conceive, that a less Compensation than that which was taken would not have been so beneficial an Employment of the Money of the Party advancing it as other Applications which his own Occasions might require. In *ex parte Henson*, 1 Mad. 116, an Objection being taken to the Proof of a Debt, in consequence of 10s. per Cent. being agreed to be paid as Commission on a Bill, the V. C. said, "The Bill was delivered in part Payment of an antecedent Debt, not in

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No Person shall
take above 5l. for
the Forbearance of
100l. for one Year.
Altered 21 Jac. I.
c. 17.

(d) Of Demand
on the Redemp-
tion of an Annuity.

III. And be it also enacted by the same Authority, That no Person or Persons, of what Estate, Degree, Quality or Condition soever he or they be, at any Time after the said last Day of January next coming, by Way or Meane of any corrupt Bargain, Loan,

consequence of any Contract for the Loan of Money. There was no Loan of Money, nor any Thing done colourably and as a Veil of Usury."

In *Marsh v. Martindale*, 3 B. & P. 154, an Annuity of 500*l.* had been granted in Consideration of 4500*l.* redeemable upon Payment of the original Consideration, with all Arrears, Costs, and Expences, upon giving six Months' Notice or allowing Half a Year's Annuity. An Agreement was entered into for the Cessation of the Annuity, upon receiving a Bill of Exchange for 5000*l.* payable at the End of three Years, which 5000*l.* was made up by the original Purchase Money and Arrears of the Annuity—an Allowance for redeeming without Notice—a Sum paid in Cash, and the Interest for 5000*l.* for three Years. This Deduction of the three Years' Interest in the first Place, and at the Time of the Advance being held upon Grounds unconnected with the present Part of the Discussion to exceed the legal Rate of Interest, the Transaction was deemed by the Court of Common Pleas to be usurious. The Opinion of the Court, upon this Point of the Case, is expressed by Lord Alvanley as follows:—"It was contended, that the Transaction was, to all Intents and Purposes, the Purchase of an Annuity, and it has been determined in all Cases, that the Purchase of an Annuity, however exorbitant the Terms may be, can never amount to Usury. But if the Transaction respecting the Annuity be only a Cover for the Advancement of Money by Way of Loan, it will not exempt the Lender from the Penalty of the Statute, or prevent the Securities from being void; then is this Transaction the Purchase of an Annuity or not? I admit, that if the Annuity had been irredeemable, the Plaintiff would have had a Right to say, that he would not sell it under 5000*l.* But here the Party was obliged to deliver up Payment of 4083*l.* It was then proposed, that a Sum should be advanced, making with the Purchase Money 4250*l.* and that a Bill of 5000*l.* should be discounted at three Years. What is this but borrowing for three Years to take the Sum of 4250*l.* for which Forbearance he was to receive Interest on 5000*l.* Upon very frequent Consideration of this Case, and with every Recollection to direct my Mind of any general Impression which I may entertain, I cannot but think the Decision extremely objectionable, and wholly repugnant to the Principles which have usually prevailed in the Discussion of the Subject, with Respect to the supposed Right to redeem; it was a Right depending upon the Condition of an actual Advance of the stipulated Amount, and for which the Party was under no Obligation to accept a Substitution, and the Case not being within the Condition and Terms of the Stipulation, was as much a Matter of open Contract as if no such Stipulation had existed, and supposing the Stipulation out of the Case, a Sum of 5000*l.* payable immediately, might have been legally received as a Consideration for the Cessation of the Annuity, and consequently a *fortiori*, an equal Sum payable at a future Period—but the more important Consideration of the Question arises from the Kind of Object which is in the Contemplation of the contracting Parties. The whole System of Usury, commencing with theological Prejudices and continued upon Considerations of political Expediency, was to prevent the taking an undue Advantage of Persons, who might be willing to give an excessive Compensation for the present Pleasure or Convenience of having a Sum of ready Money at immediate Command—and almost all the Cases, which have arisen respecting the Evasion of the Statute, have turned upon the Terms of an immediate pecuniary Accommodation received, or at least upon the Redemption from, and Forbearance of paying a Sum of Money, which might have been immediately demanded; but in the Case in Question, no such pecuniary Accommodation was in the Contemplation of the Parties. Lending out of Consideration the small Sum advanced for the Purpose of making up the Amount, no Money, nor any Thing regarded as immediately convertible into Money, was advanced—no Money, which could have been immediately demanded, was forborne; the whole Object was the Cessation of a valid but inconvenient Obligation, for the Cessation of which (subject to the express Stipulation of Redemption upon different Terms) the Parties were as much at Liberty to contract, according to their respective Views

Exchange, Chevisance, Shift, Interest of any Wares, Merchandises, No. 1.
or other Thing or Things whatsoever, or by any other corrupt or 37 Hen. VIII. c. 9.
deceitful Way or Mean, or by any Covin, Engin or deceitful Way or
Conveyance, shall have, receive, accept or take in Lucre, or Gains for

of their own Convenience, as upon the Purchase of an Estate or any other conceivable Subject.

A Contract upon the Sale of Goods, to receive a higher Price exceeding the legal Rate of Interest, if the Price were not paid in a given Time, was ruled to be not usurious, it appearing to be the Usage of the particular Trade.—*Floyer v. Edwards*, Cowp. 112; but this Profit was, in a subsequent Action for Money had and received, disallowed as unreasonable, and one which could not be recovered in that Species of Action, although not usurious.—*Plumbe v. Carter*, Cowp. 116. This Decision was in a great Measure founded upon the particular Views of Lord Mansfield, with Respect to the Action for Money had and received, enabling the Court to take a more comprehensive View of the Fairness and Propriety of the Transaction, than in other Proceedings resting upon a Question of mere Legality. In a subsequent Case, when it was agreed between a Bleacher and his Customer, that the former should send in his Accounts every three Months, and that in Case of immediate Payment a Discount should be taken off of 30 per Cent. the Commissioners of Bankrupt refused to allow a Proof for more than the Sum to which the Debt would be reduced to by the stipulated Discount, with an Addition of Five per Cent.—and Lord Loughborough refused a Petition for an Allowance to prove the Remainder of the Demand, although it appeared to be according to the Custom of the Trade; observing, that the Trade of a Gold Refiner, upon which *Floyer* and *Edwards* arose, had been turned into a Cover for Usury—and that the Custom of the Trade could not make the Debt more than the Money really advanced with Five per Cent. The Creditor could not have more than Five per Cent.—*Ex parte Aynsworth*; 4 Vesey, 679. This short Judgment does not take a very distinct View of the Case; it speaks of Money advanced, and not taking more than Five per Cent. upon the Money so advanced, and at the same Time the Transaction is not treated as usurious, for the Party was allowed to recover what was considered as the actual Debt, with Five per Cent. thereon; and the real Question, which was of no small Importance, was not fairly met, viz. how far a Party upon Sale of Goods, or other Contract unconnected with the Loan of Money, may agree to make an Abatement, upon Payment within a stipulated Time; and how far the Sum, to which the Price would be reduced by such Abatement, should be regarded as the real Price. There is no Ground whatever for allowing the Interest, so far as this Amount of 5L per Cent. unless as connected with the Period of a Year, which was no Ingredient in the Case, and very few Tradesmen would not prefer making a Reduction of a greater Amount, in Case of immediate Payment, to allowing the Demand to remain open upon general Credit. When the Discount is of so large an Amount as in the Case referred to, and so far beyond any Advantage which could be anticipated by the mere Difference of the Time of Payment, it seems reasonable to conclude, that the Transaction is only a Contrivance to secure a larger Dividend in Case of Bankruptcy, and not as a substantial Contract intended to be acted upon between solvent Parties; but this View of the Subject is wholly connected with the Question of Usury.

The following Cases have occurred upon Questions of Usury, as connected with the Sale of Real Estates. In *Dewar v. Span*, 3 T. R. 425, upon the Sale of an Estate in the West Indies, it was agreed, as Part of the Contract, that Part of the Purchase Money should remain at Interest at Six per Cent. which was ruled to be usurious. The Discussion principally turned on the Effect of St. 14 G. III. c. 79, respecting West India Securities, (see No. 6 of this Title.) It was urged, that as the Payment of such Interest was Part of the Contract, the Bond given for securing it was legal, and that the Transaction could not be called Usury within the true Meaning of the Statutes, for they all relate to Loans of Money, and here was no Loan at all; that, in *Yeoman v. Barton*, 1 Lutw. 271, it was declared, that the Plaintiff sold the Defendant several Pieces of hammered Money, to the Amount of 300*l.* which the Defendant promised to pay, with 4*l.* 10*s.* Interest, at the End of Eight Months, and the Court held there was no Loan, without which there could be no Usury. The Opinion of the Court was

(e) Of Discounts, &c. on the Sale of Goods.

(f) Of Transactions respecting the Sale of Lands.

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the forbearing or giving Day of Payment of one whole Year of and for his or their Money or other Things that shall be due for the same Wares, Merchandises, or other Thing or Things, above the Sum of ten Pound in the Hundred, and so after that Rate, and not above, of

pronounced by Lord Kenyon, merely upon the Effect of the Statute of Geo. III. accompanied by the general Observation, "that if the present Attempt were to succeed, it would sap the Foundation of the Statutes of Usury." This Point has always appeared to me to be entitled to a rather more serious Notice, and the Case to have been decided with too much of the haste which has too often blended itself with the Administration of Justice. There have been the Terms of Panegyric by confounding it with *non est* cases, which were evident, that a consideration of the Terms of a Debt, and the nature of the Agency as possible with the Transactions, which it was intended to be intended to result in and correct; but this hasty and defective Opinion was pronounced on the Impulse of the Moment, and Mr. Justice Kenyon was establishing a Doctrine most evidently at Variance with the general Principles of the Subject, and the previous Course of judicial Determinations. A much more accurate View of the Law of Usury appears to have been taken by Lord Commissioner Eyre, in *Spurrier v. Mayors*, 3 Bro. Ch. 28. On Sale of an Estate, the Defendants paid Part of the Purchase Money, and agreed to pay the Remainder at a certain Day, with 5 per Cent. Interest, or otherwise to pay a Rent, (considerably exceeding the Amount of legal Interest,) deducting 5l. per Cent. on the Amount which should be paid. The Opinion of the Lord Commissioner was as follows:—The Language of the Agreement gave it, to my Mind, the Appearance of Usury; but when one defines Usury, and looks at the Spirit of the Agreement, the first Impression does not seem sufficiently strong to sustain the Defence. Usury is the taking of more than 5l. per Cent. for the Forbearance of a Debt. The first Question therefore is, Was there a Debt? I think not. The whole rested upon an executory Agreement, which, for Performance, depended on many Circumstances which might prevent its ever becoming a Debt. This however is a narrow Ground—take it on the more general Ground, as disclosed by the Proceedings, the Contract was for a Title, and almost for ready Money. Possession till the Completion of the Title, was a fair Subject of Contract between the Parties. In the Event of the Money not being paid, a new Idea appears to have occurred to the Parties, as to the Possession. The Bargain for Title was to be suspended, and a new Relation to arise between the Parties, namely, that of Landlord and Tenants. If so, there is nothing usurious. If they turned themselves into those Characters, the Plaintiff might well be considered as entitled to Rent till he put the Estate out of him. The Language of the Agreement ought not to control what I conceive to have been the Substance of it; and as it is an executory Agreement, the Court has more Reason to give it a liberal Construction."

Nothing can be more clear than the Justice of the Principle stated in this Opinion, that the Language of the Agreement ought not to control what is supposed to be the Substance of it. See also as to Contracts for Interest upon Interest, upon the Sale of a Partnership Interest, *Tarleton v. Backhouse*, Coop. Ch. R. 231.

(g) Of Contracts
respecting the Sale
Transfer of
Stock.

It is ruled not to be usurious to advance a Sum of Money upon the Sale of Stock, in Consideration of receiving the same Amount of Stock at a future Day, or of replacing the Stock at a given Day, and in Default thereof paying the Money advanced at a subsequent Day, with the Amount of the Dividend that would have been produced by the Stock in the mean time.—*Tate v. Willings*, 3 T. R. 531. And in Consideration of forbearing to sue for a Debt, to agree at a given Day to purchase such Stock as might have been purchased with the Debt at the Time of the Agreement being made, with such Interest as the Stock would have produced in the mean time.—*Sanders v. Kentish*, 8 T. R. 162.—*Maddock v. Ramball*, 3 East. 304. And where Stock was lent upon a Bond to replace it on a given Day, with Interest at 5l. per Cent. in the mean time upon the Sum which the Stock produced, the Stock not having been replaced at the Time, it was held that the Lender was entitled to the Amount produced by the Sale of the Stock with Interest, and not compellable to accept the Amount of the Stock, (which had fallen,) with the Dividends which had accrued thereon in the mean time.—*Forrest v. Elwes*,

and for a more or less Sum, or for a longer or shorter Time, and no more or greater Gain or Sum thereupon to be had, upon the Pains and Forfeitures hereafter in this Act mentioned and contained.

IV. And be it further enacted by the Authority aforesaid, That if

4 Vesey, 492. [This Case was not argued on the Ground of Usury.] But where a certain Amount of Stock was to be transferred, or the Value thereof, at a particular Day then past, when a Loan ought to have been repaid, or paid at the Option of the Lender with Interest in the mean Time, the Master of the Rolls ruled the Contract to be usurious, as it reserved the Capital with legal Interest, and likewise a contingent Advantage, without putting either Capital or Interest in any Kind of Risk, and it was usurious to stipulate for the Chance of that Advantage.—Barnard v. Young, 17 Vesey, 44.

Where Bankers agreed to give Credit in Account to a Person who was indebted to them for a certain Sum, for which he was to purchase Stock of a certain Amount, and which at the then current Price was more than the Money credited would purchase, and account for the Dividends as from the last dividend Day, and the Sum was credited accordingly and Drafts honoured by the Bankers; it was held that the Contract was usurious, though the Price of Stocks was less than when several of the Sums were advanced; but that the Party was entitled to Credit in Account for the Amount agreed upon.—Boldero v. Jackson, 11 East, 612. Where Money was advanced upon the Security of Omnium, which was to be taken back by the Borrower at a fixed Advance of Price at a Day certain, and the Difference in Price exceeded 5l. per Cent. for the Period, the Transaction was ruled to be usurious.—Smedley q. r. v. Roberts, 2 Camp. N. P. 607. Where a Person having a vested Interest in Stock, which he could not transfer till a future Day, sold his Interest in the Principal and Dividends at a Rate below the current Price, it was held not usurious.—Pike v. Ledwell, 5 Esp. N. P. 325.

The Purchase of an Annuity for Years with a Power of Redemption does not fall within the Statutes of Usury if *bona fide* made, and there is no Obligation to repurchase, although the Annuity may exceed the legal Rate of Interest. Thus, where D. had agreed to purchase a Lease for 40 Years, subject to the Rent of 5l. and not having the Money, B. by Agreement with him, paid the 300l. and took an Assignment to himself, and then demised the Premises to B. for 39 Years at the Rent of 35l. of which the original Rent was to be part; and D. covenanted to pay the Rent, &c.; and B. agreed, that if D. should pay him 300l. at the End of four Years, the Rent should cease, and he would reconvey the Estate. By Hale, C. J. this was not Usury within the Statute, for D. was not obliged to pay the 300l. but at his Election might pay it if he choose, and thereby determine the Rent and have the Term, so that in Effect it was only a Bargain for an Annuity of 30l. for 39 Years, to be secured in this Manner, but determinable sooner if the Grantor pleased; but the Grantee had no Remedy to recover the 300l. if the Grantor did not think proper to pay it; but if B. had any Security for the Re-payment of the Money, or by any collateral Agreement, it was to have been ruled, that had been Usury.—Rex v. Dury, 2 Lev. 7; and in *Tatfield v. Finch*, Cro. Eliz. 27, it was held, that the giving 566l. for an Annuity of 120l. for twenty-three Years was no Usury, where there was no previous Communication to have any Consideration for the Loan of the 566l.; but Bell, Chief Baron, said, that if two Men speak together, and one desires the other to lend him 100l. he will give him above 10l. per annum, and for the Evasion of the Statute they invent this Practice, that he shall grant to the other 30l. per Annum out of his Land for 10 Years, this is Usury, although he never have his 100l. again. But if *bona fide* one buyeth an Annuity of 40l. for ten Years for 100l. this is no Usury, if the first Communication was not corrupt—see *Symonds v. Cockerill*, Noy. 151 cited, 3 B. & P. 160, to the same Effect.

It is a settled Point, that if the principal Sum advanced is by the Terms of the Contract fairly put in hazard, no Usury is incurred by taking more than the legal Rate of Interest, but that the Usury is not prevented by a Hazard which only affects the Interest, or as it is laid down by Dodderidge, C. J. in *Roberts v. Treayne*, Cro. Jac. 507. If I lend 100l. to have 120l. at the Year's End upon a Casualty; if the Casualty goes to the Interest only, and not to the Principal, it is Usury; for the Party is to have the Principal again come

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7 Hen. VIII. c. 9.
There shall
be taken above 10l.
in the 100l. upon
le or Mortgage
Lands.

(1) As to Annuities for Years.

(1) Of Contracts of Hazard.

No. 1. any Person or Persons, at any Time after the said last Day of January, 37 Hen. VIII. c. 9. do bargain and sell, or lay to Mortgage by any Way or Mean, any Manors, Lands, Tenements or Hereditaments to any Person or Persons, upon Condition of Payment or Non-payment of any Sum or Sums of

what will; but if the Principal and Interest are both at hazard, it is then not Usury.

The Reasonableness of this Distinction is not quite evident, for if the Chances are equal upon which double the Interest is to be paid, and the whole Interest is to be lost, it would seem to be a fair Wage of the Amount of the Interest, but it is a Distinction which is always recognized and acted upon.

Upon the general Doctrine of placing the Principal in hazard, it was ruled, in the famous Case of Lord Chesterfield v. Janson, 2 Ves. 125, 1 Ash. 301, 1 Wils. 286, that a post-die Bond on receiving 5000*l.* to return 10,000*l.* if John Spencer the Obligor survived his Grandmother, the Duchess of Marlborough, was not usurious. Upon this Principle all ordinary Contracts are supported. So an Agreement in Consideration of 100*l.* to pay 80*l.* to each Daughter of a Person having five who shall be living at the End of ten Years—Bedingfield v. Ashley, Cro. Elz. 741.

But a mere colourable Hazard will not take the Case out of the Statute. Thus, in the preceding Case, the Court held, that if the Contract had been that he should pay at the End of one or two Years 300*l.* if any of the Children were alive, that had been Usury—as in Mason v. Abdy, Carth. 67; and by the Name of Martin v. Abdy, Show. N. Hylr. 2. I said, that dying within six Months was no Hazard, and therefore usurious—and see Richards v. Brown, Cowp. 770.

It is clear that the Hazard must be one arising out of the Terms of the Contract itself, and not the common Hazard, that the Contract may not be performed from the Insolvency of the Borrower; and upon this Ground it was ruled, that a Loan upon which the Lender was, beyond legal Interest, to receive a certain Portion of the Profits of a Trade, was usurious, although it was objected that by receiving a Share of the Profits he would, with respect to third Persons, render himself liable for all the Debts and Losses—Morse v. Wilson, 4 T. R. 353.

(k) Of Loans accompanied by Services.

The stipulating by a Factor for a higher Commission, beyond legal Interest, on his Advances of Money than he would have had if he had not furnished the Money, was ruled by Lord Ellenborough, in *Nisi Prius*, to be usurious—Harris v. Bolton, 2 Campb. 548. An Assignment of a Contract for the Purchase of Timber to secure certain Advances with Charges, and 200*l.* as a Compensation for Trouble in the Business, was ruled not to be usurious on the Face of it, it not appearing that any Part of it was intended as an additional Bonus for the Advance of the Money—Palmer v. Baker, 1 M & S. 56.

(l) Of Penalties in Case of Non-payment of the Principal.

In Burton's Case, 5 Co. 89. b. it is laid down, that an Agreement to pay 20*l.* a Year from Michaelmas next, if 100*l.* is not paid by Michaelmas, is not usurious, for the Party may repay it before Michaelmas without Interest, if this was the true intent, and there are several other Authorities to the same Effect. Mr. Plowden mentions the Case of Moore v. Battie, before Lord Keeper Henley, Amb. 37, as availing this Doctrine; but the Case was not apparently considered in that View by Lord Henley himself, nor does any such Inference result from it, there being no Intention in that Case that the Borrower should at any Time repay the Money without Interest. I should entertain, however, very little Doubt that it is an Agreement against which a Court of Equity would relieve upon the Payment of the Principal and legal Interest, and the Contract would be regarded with much Suspicion in a Court of Law, as furnishing Evidence of an actual Intention for the Payment of usurious Interest.

(m) Of the Interest.

With respect to the Interest or other Compensation to be paid, in Barnes v. Welch, Cro. Jac. 25. Yelv. 36, 1 Roll. 519, Moor 644, (by the Name of Wesley's Case, and see Dalton's Case, Nov. 1711,) a Question was raised, whether it was usurious to stipulate for the Payment of Interest at the full Rate allowed by Statute for half a Year. The Ground of the Doubt was, that for the Space between the End of the Half Year and the End of the half Year Interest might be made on the Interest, so that more than the Rate allowed would be made on the whole Sum for the Year; and the Importance of this

Money to be had, paid or made at any Day certain, or before any such Day by him that shall so bargain, sell or lay to Mortgage the same Manors, Lands, Tenements or Hereditaments, that the same Person or Persons, to whom any such Manors, Lands, Tenements or Here-

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Consideration would become very manifest by reversing the Case, and reflecting that a Re-payment of Principal with simple Interest, at the End of ten Years, would be a very moderate Compensation, supposing the legal Interest to be the actual Value for a Loan or Forbearance for one Year. The Decision was in favour of the Legality of the Contract; but it was said, that if the Lender had agreed to take his Money for the Forbearance instantly when he lent it, that had made the Assurance void, for there he had not lent the entire Sum for one Year, and the other had not the Use of his Money according to the Intention of the Law.—See *ex parte Bevan*, 10 Vesey, 223; as to Stipulations for half-yearly Settlements, and charging Interest in the Balance in mercantile Transactions. In *Lloyd v. Williams*, 3 Wils. 252, 2 Bl. 792, it appears, by the later Report, that Sir Wm. Blackstone was of Opinion, that Interest might as lawfully be received beforehand for forbearing, as after the Term is expired for having forborne, and that it should not be reckoned as merely a Loan of the Balance, else every Banker in London, who takes Five per Cent. for discounting Bills, would be guilty of Usury.

The deducting, in the first Instance, the full legal Rate of Interest, upon the Discount of Bills and Notes, is fully agreed not to be usurious. —But in *Marsh v. Martindale*, 3 B. & P. 134, it was considered that that Doctrine arose merely out of the Course of Trade, and Lord Alvanley, in delivering the Judgment of the Court, said: “If nothing more has been done in this Case than what has always been done by Way of Accommodation among Merchants, the Transaction was not usurious; but the Rule must be confined strictly to that Sort of Transaction, for if Discount be taken in an Advance of Money, without the Negotiation of a Bill of Exchange, it will amount to Usury, as appears clearly from the Cases which were cited in the Agreement,” (viz. *Barnes v. Worledge*, and *Dalton's Case* above cited,) and in the principal Case it being agreed, that 5000*l.* should be paid at the End of three Years, for Advances amounting to 4250*l.* or in other Words, that three Years' Interest of 5000*l.* to be paid at the Expiration of that Time, should be deducted in the first Instance, the Case was holden to amount to Usury. In a preceding Part of this Note, the Case has been mentioned with Reference to the Question, whether the Nature of the Transaction was such as to render the Law of Usury properly applicable.

The taking of excessive Interest is unious, although taken in the Form of Rent, at the Rate of 50*l.* for Half a Year for a House worth only 20*l.* a Year.—*Bede v. Jackson*, Cro. Jac. 440; and see the Observation of Lord Hardwicke to the same Effect, in *Adlington v. Cann*, 3 Atk. 134; see also *Jeston v. Brooke*, Cowp. 795.

In *Morisset v. King*, 2 Bur. 821, in Consideration of 100*l.* advanced by M. to be repaid without Interest at the End of four Years, K. agreed to board the Daughter of M. and that she should be Co-partner with the Wife, in the Business of a Milliner, &c. the Contract was ruled not to be usurious, as K. might receive so much Advantage by the Partnership as to be worth the Consideration.

The Question of Usury often depends upon the particular Intent of the Parties to the Contract, so as to reduce the Point in Dispute to a mere Question of Fact for the Decision of the Jury, whether K. was or was not intended to take a greater Interest than the Law allows upon the Loan or Forbearance of Money. It has been already stated as an established Principle, that if the real Nature of the Transaction, as founded on the Intention of the Parties, be found by the Jury to be an usurious Loan, no Form or Colour, which may be given to it, will prevent the Law from regarding such Transactions from having its full Operation; and several Cases were referred to as supporting and illustrating that Proposition. In the Case of *Hammatt v. Yee*, 2 Bos. & P. 144, where upon discounting a Bill, Bills at thirty Days and smaller Periods were charged as Cash, Eyre, C. J. observed to the Jury, that the Bills appeared to be in the Nature of a Remittance of the Banker's Money to London, and if the Plaintiff had not taken more than a reasonable Compensation for their

(n) How far the Question of Usury depends upon the Intent of the Parties, as a Question of Fact.

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ditaments shall be so bargained, sold or laid to mortgage, shall not by reason thereof have, ne take, in Lucre or Gains of the Issues, Revenues and Profits of the same Manors, Lands, Tenements or Hereditaments, above the Sum of ten Pound in the Hundred for one whole Year, and

Trouble, unless indeed the Mode of Payment had been made a Term on which alone the Bills would be discounted, it was not Usury; and the Jury having found the Transaction not to be usurious, his Lordship, upon Application for a new Trial, said that whether more than 5*l.* per Cent. was intentionally taken upon any Contract for Forbearance, was a mere Question of Fact for the Consideration of the Jury, and must always be collected from the whole of the Transaction as it passes between the Parties—and he was of Opinion, that it never could be determined that any particular Fact constitutes or amounts to Usury till all the Circumstances, with which it was attended, had been taken into Consideration—and, in the Course of his Judgment, he repeatedly expressed himself to the same Effect, shewing that under the Circumstances there was just Ground to warrant the Conclusion which the Jury had drawn; and, the other Judges concurring in the same Doctrine, a new trial was refused.

Where the Intention of the Parties was not to commit Usury, but the Deed was so drawn by Mistake of the Scrivener as upon the Face of it to be usurious, it was held that the Statute did not attach. The Agreement was on the 23d of May for a Loan for a Year, and the Bond was made for Payment of the Principal and a Year's Interest, on the 24th of May next ensuing, and there was a Question whether this should be construed to mean the 24th of the same May, or the 24th of May in the following Year, but all the Court held, that although it should be expounded, to refer to the same Month and Year, which was the next Day, yet as the Agreement was found to be to make the Loan for a Year, and that the Assurances were for Payment at the End of the Year, and by the Scrivener's Mistake it was made payable the next Day, it was not Usury within the Statute, for there was not any corrupt Agreement between them, but a true and absolute Agreement, and the Act of a Stranger should not bring the Party within the Danger of the Statute—*Buckley v. Guildbank*, Cro. Jac. 578; so where the Plaintiff by his Replication alleged, that the Agreement was for Forbearance for a Year, and by the Scrivener's Mistake it was made payable at the Half Year's End, and he not knowing thereof accepted the Bond, the Court ruled that such an Allegation might be well made; for it was the shewing of the true Agreement, that no Interest was to be paid by the said Agreement but such as stood with the Law—*Nevison v. Whitley*, Cro. Car. 301; and where the Plaintiff replied, that it was agreed that he should lend to the Defendant 50*l.* at 5*l.* per Cent. and that the Scrivener should take a lawful Bond, with Condition to pay Interest at 5*l.* per Cent. and that the Scrivener, in the Absence of and without the Notice of the Plaintiff, took the Bond whereby, by the Mistake of the Scrivener, 2*l.* 10*s.* was inserted for six Months, and traversed the corrupt Agreement, it was ruled to be the same Case with the preceding—*Bush v. Buckingham*, 2 Vent. 83; so a Bill given for excessive Interest, by a Mistake of Calculation, was held allowable for the Sum really due—*Glasford v. Lang*, 1 Camp. N. P. 149.

In *Le Grange v. Hamilton*, 4 T. R. 613, a Bond was given for Payment of 100*l.* with Interest, at 5*l.* per Cent. in Payments of 26*l.* yearly, by quarterly Payments of 5*l.* until the whole should be paid, and a Memorandum was indorsed, that at the End of each Year the Year's Interest due was to be added to the Principal, and then the 20*l.* reserved was to be deducted and the Balance remain as Principal. Lord Kenyon thought the Consideration was, that a Year's Interest should be charged on the whole, without allowing for the intermediate Payments, which would be usurious—the other Judges thought, that the Memorandum was only for the Purpose of adding the Interest, which became due in the Course of the Year to the Principal, so as to make the whole carry Interest all Part of it was again reduced—and *Arbuthnot & Grose, J.* held that if the Court could by any reasonable Construction consider it not to be Usury, they were bound to do so.

But if the Agreement entered into is such as appears to the Court to be usurious, the Case falls within the Statute, although the Parties might not be aware that they were transgressing the Law—Thus in *Marsh v. Mardendale*,

so after the Rate aforesaid for a more or lesser Sum, or for a longer or shorter Time, and no more, nor otherwise, upon the Pains, Forfeitures and Penalties hereafter in this present Statute limited and expressed. No. 1.
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3 B & P 174, already twice cited upon the principal Points, Lord Alvanley said, "I stated to the Jury, that if a Man agree to take more than 5l. per Cent the Law declares that to be such an Agreement as is corrupt, whether the Party thought at the Time he were acting contrary to the Law or not, and though the Jury have found, that the Plaintiff did not think he was acting contrary to the Law, there is nothing in that finding to prevent us examining the Transaction, and declaring it to be corrupt if it appear to us to be so in Point of Law, without sending the Case back to a Jury to find the Corruption." And in *Barnard v. Young*, 17 Vesey, 44, already cited, where a Contract to pay Money or replace Stock, at the Option of the Lender, was holden usurious, the Master of the Rolls, after stating his Opinion upon the Contract, added "Therefore, though it was not probably so intended, this is in Fact an usurious Contract."

In an Action for the Penalties the essential Charge is, as has been observed, the taking usurious Interest; for, however usurious the Contract may be, no Penalty is incurred without taking such Interest.

Part II On the Penalties of Usury.

Whether the taking more than legal Interest, without a previous Contract for the Purpose, does or does not subject the Party to the Penalty, seems not to be perfectly settled. In *Rea v. Allen*, Sir T. Raym, 196, Twisden, J. laid it down, that if the Party do not contract for more than the Statute allows, and afterwards he will take more, the Assurance shall not be avoided, but the Party shall forfeit the treble Value, as if a Man, when Money was at 8l. per Cent lend Money and takes Bond for the same, and the Statute 12 Car. II. is made, and he will continue the old Interest upon that Bond, the Bond shall not be avoided by such Acceptance of Interest, but the Party shall forfeit the treble Value by the Statute, but no Judgment was given.

With respect to the Matter stated by Twisden, by Way of Illustration, it seems to be agreed, that a Contract made before the Statute reducing the Rate of Interest is no Way within the Meaning of the Statute, and that it is still lawful to receive the former Interest in respect of such Contract.—See 1 Hawk. P C 22, sec 12.—*Walter v. Peury*, 2 Vern 145, 1 Eq Ab. 268. Whether the Contract, otherwise than in respect of the Penalties, continues as to the higher Rate, is a Point upon which the two Authorities last cited seem to differ.

In an anonymous Case, 1 Vent. 38, temp. 21 Car. II. the Information was for taking usurious Interest for Three Quarters of a Year then passed, not averring, as it seems, any preceding corrupt Agreement. Upon Motion in arrest of Judgment, on the Ground that as the Time of Forbearance was past the Party might give what he pleased in Recompence, there being no preceding Agreement, the Court overruled the Objection, and said they would expound the Statute strictly—and if Liberty were allowed in that Case, the Brokers might oppress the People exceedingly, by detaining the Pawn, unless they would give them what they would please to demand for the Time after Failure of Payment. In *R. v. Walker*, 1 Siderf. 421, (which is supposed by Mr Plowden to be the same Case) but is of Trin. 19 Ch. II. the Court upon the like Objection are reported to have held, that if the Case was not within the Statute 12 Ch. II. the taking was an Offence at Common Law, and therefore they gave Judgment of Fine and Imprisonment.

If, after an Agreement for legal Interest, a subsequent Agreement is made for more Interest, it is Usury, and the Penalty is incurred by taking such Interest, but it does not avoid the original Contract—see *Reg. v. Lewel*, 7 Mod. 119. In *Brown v. Fullhey*, 4 Leon. 43, it was the Opinion of the Court, that although the usurious Interest agreed upon was tendered and the Lender did tell the sum, yet, if he did not take and accept it, he did not incur the Forfeiture.

In *Mallory v. Bird*, cited Cro. Eliz. 30, it is said, if one contracts to have 20l. for the Loan of 100l. if he taketh nothing of the 20l. he is not punishable by the Statute; but if he taketh any Thing, if but one Shilling,

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The Penalty of
of the Offence
in the Statute

V. And be it further enacted by the Authority aforesaid, That if any Person or Persons, of what Estate, Degree, Quality or Condition soever he or they be, at any Time after the said last Day of January next coming, shall do any Act or Acts, Thing or Things, contrary to

At what Time
the Penalty at
taches

The Action must
be brought within
a Year.

this is an Affirmance of the Contract, and he shall answer for the whole Contract. But Aston, J. upon this Case being cited, observed, that it meant one Shilling above the legal Interest, and such is the Construction which has always prevailed in practice—see *Fisher v. Beasley*, Doug. 235.

As by Statute 31 Eliz. c. 5, all Actions and Informations upon penal Statutes must be commenced within the Time thereby prescribed after committing the Offence, it is often a material Question at what Time the Act of taking usurious Interest or Compensation is complete. Upon this Subject the following Cases have occurred.—In *Lloyd v. Williams*, upon a Loan of 100*l* for three Months, it was agreed, that the Borrower should pay 6*l* 5*s*, the 100*l* was advanced, and the Borrower immediately paid the 6*l* 5*s* for Interest by way of Advance, and gave his Promissory Note for 100*l* at three Months, the Court of C. B. held, that as the 100*l* was actually lent by the Defendant to the Borrower, who received it with one Hand and immediately paid the 6*l* 5*s* with the other Hand, the Offence was then completely committed and the Time being more than a Year before the Commencement of the Action the Plaintiff could not recover. Gould, J. (according to the Report of B. Stone, vol. 2, p. 794,) inclined to think that the original Loan was only 93*l* 15*s*, the 6*l* 5*s* being taken thereout; but he agreed that the Plaintiff could not recover upon that Action, which was brought for 300*l* at the 100*l*, the Sum of 100*l* alleged to be lent. The View of Gould J. as to the Question of Loan, provided the Declaration had been properly framed, seems to accord with the Opinions which have prevailed in the subsequent Cases. In *Fisher, q. t. v. Beasley*, Doug. 235, 100*l* of the Defendant, for which he gave a Bond, payable with Interest at the End of six Months, and also paid two Guineas as a Premium at the Time when the Money was advanced. At the End of six Months the 100*l* was repaid, with 2*l* 10*s* for Interest, and the Court were of Opinion, that the Offence was not complete till the half Year's Interest was received. In *Maddock, q. t. v. Hammett*, 7 T. R. 184 in an Action for taking usurious Discount on a Note of 1000*l* it appeared that that Note was discharged by giving another, still outstanding and unsatisfied. Buller, J. was of Opinion at the Trial, that the Offence charged was not complete, for thus, in order to constitute Usury, there must be an usurious Taking either of Money or Money's worth, whereas nothing had been taken by the Defendants but only the Note, which at present only gave them a Right of Action, and payment might never be paid; which Opinion, upon an Application for a new Trial, was confirmed by the Court. Upon a Loan of 400*l*, the Borrower agreed to give something more than legal Interest as a Compensation, but no particular Sum was agreed upon. After the Execution of the Securities and Payment of the Money, the Parties went to another Place, where 50*l* was given as a Compensation, and Interest at 5 per Cent. on the 400*l* was paid for several Years. Such Interest was adjudged usurious, in as much as the Loan could only be deemed a Loan of 450*l*—*Scurry, q. t. v. Freeman*, 2 B. & P. 361. So it was held in *Wade, q. t. v. Wilson*, 1 East 19, that where a Premium was given at the Time of the Loan, and at the End of half a Year Interest was received (qua Interest) for the Money lent, the Usury was complete when the half Year's Interest was received.

Of the Locality
of the Action

An Action for Usury, like all other penal Actions, must, by Stat. 21 James I. c. 4, be brought in the proper County. In the before mentioned Case of *Scurry, q. t. v. Freeman*, 2 B. & P. 361, a Draft was given to the Defendant for the Interest in Middlesex, and received by him as Cash, but afterwards exchanged by him for Money with a third Person in London, the Court of C. B. ruled, that the Venue was properly laid in London, as the Draft was merely a Promise to pay, and the actual Receipt of the Money and taking the Usury was in London. Where Rents were received in Middlesex, but the Balance was settled in London, the Venue was held to be well laid there; and Ashurst, J. seemed to think it might have been laid in either County—*Scott, q. t. v. Best*, 2 T. R. 236. Qu. if the same Opinion might

the Tenor, Form and Effect of this Statute, or of any Clause, Article or Sentence contained in the same, that then all and every Offender and Offenders therein, or in any Part thereof, shall forfeit and lose for every such Offence the treble Value of the Wares, Merchandises, and

not hold good in *Scurry v. Freeman*, and the Draft be considered as Money's Worth received in Middlesex; it would often be impossible to shew what a Draft had been actually passed away for Value to a third Person.

In 1 Hawk. c. 81, s. 24, it is laid down, that in pleading an usurious Contract, by way of Bar to an Action, you must set forth the whole Matter, especially because it lay within your own Privy; but that in an Information on the Statute for making such a Contract it is sufficient to set forth the corrupt Bargain generally, because Matters of this Kind are supposed to be privately transacted, and such Information may be brought by a Stranger—*see also* to the same Effect *Bedo v. Sanderson*, 6 Co. Jac. 410.

The Declaration, or Information must set forth, 1 the Taking by corrupt Agreement, 11 Rep. 58, *Rex v. Garth*, Kel. 624—*Woody's Case*, 6 Co. Jac. 104, and if the Declaration is upon two Loans, one of which is alleged to be corrupt and the other not, the Plaintiff shall have Judgment for the Part that is good, it being in the Nature of two several Actions—*ad id*.

2 With whom the Contract was made, *cum quodam ignoto*, is insufficient—*V. N. Henberk's Case*, 2 Leo. 39—*Nasie's Case*, Noy. 163. Where A was indebted to P and B to C, and C, for an usurious Consideration agreed to take A. for a Debtor instead of B, it was held, that the Contract might be stated as a Loan from C to A. *Wade, q. t. v. Wilson*, 1 East 195, the Contract may be stated for Forbearance to A. alone, although B joins in the Security, *id. ibid*. 3 A Note was given by A. as Surety for B, and the Defendant, as for a Note, having taken an usurious Consideration for forbearing to sue B. The transaction was held to be properly described as a Forbearance to A. to sue B. lent to A. by the Defendant, and that the transaction was a Loan of Money—*Mannert, q. t. v. Postan*, 3 Bos. & Pul. 343.

4 Sir William Dixon's Case, 1 Leon. 95, it was said by Wanwood, Baron that the Information had not shewn whom the Money was, and therefore not good, but, Query, if this means any Thing more than that it must be set forth by whom the Loan was made, the Court of Precedents not being to make any express Averment that the Money lent was the Money of the Defendants.

5 The Time of Taking—but this seems to be only Form, as the common Allegation of Time in other Pleadings, and the Cases in which it is held to be Substance seem to arise from confounding it with the next Particular.

6 The Time for which the Forbearance is given, and which must be proved as stated. The Declaration stated a Contract made on the 21st of December, 1774, for giving Payment to the 23d of December, 1776, and the Contract proved was on the 21d of December, 1774, for giving two Years, which was held to be totally different from the Contract stated—*Carlisle v. Ficare*, Cowp. 671. In *Harris, q. t. v. Hudson*, 4 Esp. 152, it is said to have been ruled, that the Day on which the Money was advanced upon an usurious Contract was material, though laid under a Videlicet, but the Ground of the Decision *comme sembler* is, that the Contract is alleged to be for a Forbearance from that Day. Where the Loan was made on the 20th April by a Check void for want of a Stamp, and which was paid on the 21st, it was ruled, that the Check, being a mere Nullity, the Loan did not take place till the 21st, and that being stated on the 20th, the Variance was fatal—*Borndale, q. t. v. Middleton*, 2 Camp. 53. Cash Notes are not to be accounted as Cash, unless previously agreed to be received as such, and Evidence that such Notes were sent on the 20th and received on the 21st, the Statement for Forbearance from the 20th was held a fatal Variance—*Brooke, q. t. v. Middleton*, 1 Camp. 416.

7 The Place where the usurious Interest was taken—but this seems merely to be Venue, although, for the Reason already mentioned, the Action must be brought in the proper County; but as to whether it be necessary to state where the Contract was made, which is only Inducement, Query—*see Sir William Dixon's Case*, 1 Leon. 95.

It was formerly held, that the Borrower upon an usurious Contract was not a competent Witness to prove the Case, but the contrary is fully established by *Abraham v. Bunn*, 4 Bur. 2255—*Smith v. Pinner*, 7 T. R. 80.

Borrower a competent Witness.

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other Thing or Things so bargained, sold, exchanged or shifted, and the treble Value of the Issues and Profits of the said Manors, Land, Tenements and Hereditaments so had, taken or received by reason of any such Bargain, Sale or Mortgage, and also shall have and suffer

Usury in the
Statute not pun-
ished by Induc-
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No Inducement lies on the Statutes of Usury, *Queen v. Dyer*, 11 Mol. 174. The Sessions have not any Jurisdiction of this Offence, *Reg. v. Smith*, 2 Salk. 680; but in *Rex v. Perley*, 2 Barnardiston, 143, it was admitted, that upon the Statute of 2 Eliz. which prohibits the taking above 10*l.* per Cent. the Sessions have Jurisdiction, though it was insisted that upon the latter Statutes they have not.

Part IV. Of the
Effect of USU-
RY on INVALID
DEBTS and SE-
CURITIES.

It is a settled Principle, that if Money is lent upon an usurious Con- tract, such Contract and all the Securities for enforcing it are void, and that no Shift or Contrivance can make them of any Validity; and at a very early Period it was established, that if a Party, upon an usurious Contract, gives a Mortgage for securing the Principal only, and a Bond for the Interest, the Mortgage is as well as the Bond shall be void—*Roberts v. Trenaync*, Cro. Jac. 507. And where several Bills of Exchange were given to secure an Advance at legal Interest, together with Part of a preceding usurious Debt, it was ruled, that all such Bills were void—*Harrison v. Hannet*, 5 Taunt. 780, Minshull 349. As to a Judgment, see *infra*.

A Bill of Exchange given on an usurious Consideration is void in the Hands of an innocent Indorsee, *Lowe v. Waller*, Doug. 736; and see *Young v. Wright*, 1 Camp. 141—*Ackland v. Pearce*, 2 Camp. 599, in which the Bill was ruled to be void, being drawn in consequence of an usurious Agree- ment between the Acceptor and a third Person, to which the Drawer was not privy.

But where a previous Debt was subsisting for Goods sold and delivered, and a void and usurious Security was taken for delay of Payment, it was ruled, that the fair Debt for the Goods still subsisted unimpeached by the usurious Transaction, and was not a colourable Pretence to cover a real Loan. *Gray v. Fowler*, 1 H. B. 462, the Reporter properly states in the marginal Abstract, as the Result of the Case, the general Conclusion, that a *bona fide* Debt is not discharged by being mingled with an usurious Contract relating to it; and see *Philips v. Cockayne*, 3 Campb. 119—*Fegrell v. Shoen*, 1 Saund. 292.

In *Daniel v. Cartony*, 1 Esp. 274, Lord Kenyon held, that a Bill good in its Inception was not avoided in the Hands of a *bona fide* Indorsee by an intermediate usurious Transaction; and where a valid Bill was indorsed by A. the Payee upon an usurious Consideration to B. who indorsed it for a valid Consideration to C., who indorsed it to B's Assignees in Payment of a Debt, such Assignees were held to have a good Title to the Bill, being clothed with the Equity of C.—*Parr v. Elison*, 1 East. 92.

Notes were discounted by Plank to the Defendant the Drawer upon an usurious Consideration and paid to the Plaintiff a *bona fide* Indorsee. He and the Defendant, upon Application for Payment, gave his Bond for the Amount—the Defendant pleaded that the Bond was given for securing Money lent upon an usurious Contract between Plank and the Defendant, to which the Plaintiff replied, that the Bond was given for a just and lawful Debt, and not, &c. A Verdict was given for the Plaintiff; and the Court were of Opinion, that the Bond was valid; but it was admitted, that if any Security be substituted for another by the Parties in order to get rid of the Statute, the substituted as well as the original Security would be void—*Cuthbert v. Haley*, 8 T. R. 390; and vide *Ellis v. Warner*, Moore 752, Cro. Jac. 32, Yeiv. 47, in which Warner, being indebted to Alder in 100*l.* gave him an usurious Bond for 30*l.* per Cent. Interest; and, by way of discharging the Principal, became joint Obligor with Alder in a Bond for the Payment of a Debt of 100*l.* due from Alder to the Plaintiff, and it was held, that the Usury did not vitiate that Security.

And where the Acceptor of a Bill, drawn in Pursuance of an usurious Contract, accepted a second Bill for the Purpose of raising Money to take up the former, and the second Bill was discounted by a *bona fide* Indorsee at the legal Rate of Interest, it was ruled by Lord Ellenborough, that the second Bill was not affected by the Usury which attended the Formation of the first—*Dagall v. Wybe*, 2 Campb. 35.

Imprisonment of his Body, and make Fine and Ransom at the King's Will and Pleasure; the Moiety of which Forfeiture of the said treble Value shall be to the King, and the other Moiety to him or them that will sue for the same in any of the King's Courts, by Actions of No. 1.
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Where a Bond given for the Performance of an usurious Contract was annulled, a fresh Bond taken for the Principal and Interest, after deducting the Payments illegally made on the former Contract, were ruled by Lawrence, J. to be valid—*Wright v. Wheeler*, 1 Campb. 165, 21—and in *Barnes v. Hedley*, 2 Taunt. 184, where an usurious Contract was entered into, and Securities given for the Performance, and several Payments made on the Footing thereof, and the Parties afterwards stated a fair Account of Principal and Interest, and the Borrower promised to pay the Balance, whereupon the Securities were cancelled; the Promise was adjudged to create a legal Debt. See *Dagnall v. Wigley*, 11 East, 43, in which Accommodation Bills were held not to be void in the Hands of a fair Indorsee, in consequence of an Understanding that a Broker should have an illegal Commission upon discounting them.

In Assumpsit if it appear either upon the Evidence or from the Plaintiff's express Shewing in his Declaration, that the Contract was usurious, he cannot recover. But a Specialty cannot be avoided by Usury appearing in Evidence, or on the Face of the Condition, but it must be pleaded—1 Hawk. c. 82, s. 20, and the Cases there cited; and see as to this Particularity required in such Pleading the Passage already cited.

Although a Court of Equity will not, in general, relieve against an usurious Contract, except upon the Terms of paying the Principal with legal Interest, the Master of the Rolls in *Barnard v. Young*, 17 Vesey 44, (already cited upon other Points) sustained a Suit by the Assignees of a Bankrupt for delivering up an Assignment of Stock founded upon a Contract which he held to be usurious, observing, that if the Assignment was usurious, the Consequence must follow that it is wholly void.—The Party in whose Favour an usurious Contract has been executed, cannot make use of it for any Purpose whatsoever. The other Party does not seek Relief to have that Contract cancelled, or other Relief directly against it, but only to enforce his own Right, contending that it is not to be impeded by having this usurious Contract set up to obstruct it.

Cases in Equity respecting Usury.

Where Securities had been given for legal Interest and more was afterwards received by taking Advantage of the necessities Circumstances of the Borrowers: upon a Suit for Redemption, the Account was directed to be taken upon the Principle of applying the Payments beyond legal Interest in Satisfaction of the Principal, and in Case the Lender was overpaid, that he should refund; Lord Talbot said, he did not determine how it would be if all the Securities were delivered up—*Bosanquet v. Dashwood*, Temp. Talb. 37; and as to Relief in Equity upon Payment of Principal and legal Interest—See *Heikle v. Royal Exchange Comp.* 1 Ves. 319—*Scott v. Nesbitt*, 2 Bro. Ch. 541—*Benfield v. Solomons*, 9 Ves. jun. 84. In *Scott v. Nesbitt*, the Relief was applied in taking an Account of Debts and Assets before the Master, the Plaintiff having recovered Judgment at Law upon an usurious Bond. But a Bill in Equity requiring a Discovery of Usury, is generally deniable to, as tending to subject the Defendant to Penalties, as to which see *Chauncy v. Tabornden*, 3 Aik. 322.—*Anon.* 8 Eq. Ab. 70, pl. 7.—*Harrison v. Southcott*, 1 Atk. 559.

In Cases of Bankruptcy if Usury be made out, the Security is cut down altogether, not leaving the Party a Creditor for that for which it was actually advanced, Per Lord Eldon, *Benfield v. Solomons*, 9 Ves. 84. And this may be taken for granted from the Case above cited, viz. *Barnes v. Hedley*, which was an Issue directed by the Lord Chancellor to try whether the Bankrupt to whom usurious Securities had been given, and afterwards assigned, was indebted to Webb.

Bankruptcy.

In *ex parte Savinier*, 3 Vesey and Beaumont 14, the Lord Chancellor said, "Upon the Notion of the equitable Jurisdiction in Bankruptcy we go much farther than Courts either of Law or Equity, as Law you must make out the Charge of Usury, and in Equity you cannot come for Relief without offering to pay what is really due, and not either prove the Usury by legal Evidence, or have the Confession of the Party; but in Bankruptcy it has been considered sufficient to suggest Usury in a Petition supported by Affidavits merely upon Information and Belief, putting the Party to prove against himself, for the

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Debt, Bill, Plaint or Information, in which Action, Bill, Plaint or Information, no Wager of Law, Essoin or Protection shall be admitted or allowed.

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or I. A. will
in Statute
be not

VI. Provided alway, and be it enacted by the Authority aforesaid,

Purpose not of giving him his real Debt, but of putting him off from all Relief. It is, I admit, now too late to alter that."

Of Relief
Case of Will
of Attorney
in Judgment

In *Kemondson v. Popham*, 1 H. and P. 270, the Court of Common Pleas set aside a Warrant of Attorney and Judgment upon an Allegation of Usury, as they were not to decide the Question of Usury in a summary Way, and in Order that the Question of Usury might be tried, which would be shut out if the Judgment was allowed to stand—but the Case passed without Discussion as to the Question of the Judgment standing as a Security for Principal and legal Interest, and in *Hindle v. O'Brien*, 1 Taunt. 413, upon a similar Application the Court directed the Money levied to be paid into Court, and referred it to the Prothonotary to take an account of all Matters between the Parties, and to compute Principal and legal Interest. Lawrence, J. concurred in this Opinion upon the Ground of the Defendant having paid Part of the Money, and intimated, that if the Defendant had applied upon the first giving the Warrant of Attorney, he would have been entitled to have it set aside, but it is very difficult to discern any Reason for this Distinction, and the other Judges (*Heath and Chamblere*) decided the Case upon the general Principle, that as the Application was to the equitable Jurisdiction of the Court, the Party applying must do what is equitable, and that if he applies to the Equity of the Court he waives their legal Jurisdiction.

Trover.

In *Witroy v. Gwillim*, 1 T. R. 153, it was ruled, that the Plaintiff could not maintain Trover for a Pledge given to secure an usurious Loan without first tendering the Principal and legal Interest, it being deemed an equitable Action.

Money lent and
received.

In *Tompkins v. Burnet*, 1 Balk. 37, at N. P. before C. J. Tieby, it was held, that a Party could not maintain an Action for Money had and received, to recover what had been paid upon an usurious Contract, and the Case is reported as being decided upon the Ground of his being *particeps criminis* and that *volens non sit injuria*, but it is evident upon the whole of the Report, that the Money borrowed had not been repaid—Lord Mansfield in *Clarke v. Shee*, Ct. wp. 300, said that the Case of *Tompkins v. Burnet* has been long exploded, and in *Smith v. Bromley*, Doug. 697 n. Lord M. said, that so far as Principal and Interest went, the Debtor was bound in natural Justice to pay and therefore could not recover it back, but for all above legal Interest Equity would assist the Debtor, or an Action would lie to recover back the Surplus if the whole had been paid; and he distinguished between a Violation of the Laws of public Policy, and Laws calculated for the Protection of the Subject against Oppression and Fraud.

The Case of *Astley v. Reynolds*, 2 Str. 915, in which a Party who had been compelled to pay more than legal Interest upon the Redemption of a Pledge, was allowed to recover it back, is sometimes cited upon this Subject, but is not very applicable, as in that Case there does not appear to have been any usurious Agreement.

Of Compound
Interest.

Contracts for Payment of Compound Interest are not illegal so as to be affected by the Statute of Usury, but are relieved against it in Equity as being oppressive. Thus in the Case of *Sir Thomas Meers*, cited by Lord Talbot in *Bouanquet v. Dashwood*, Rep. Temp. Talbot 37, a Covenant was inserted in a Mortgage, that if Interest was not paid punctually at the Day, it should from that Time, and so from Time to Time, be converted into Principal, the Lord Chancellor relieved against the Covenant as unjust and oppressive.—So in *Broadway's Case*, *Broadway v. Morcraft*, Moseley 247.—In *Lord Osulston v. Lord Yarmouth*, 2 Balk. 440, Lord Cowper held the Clause to be void and of no use, and said that to make Interest Principal, it is requisite that Interest be first grown due, and then an Agreement concerning it may make it Principal. Lord Talbot said, that the Reason is because all these Clauses carry somewhat of Fraud with them, not such a Fraud as is properly Deceit, but such Proceedings as lay a particular Burthen or Hardship upon any Man, it being the Business of this Court to relieve against all Offences against the Law of Nature and

That this Act, nor any Thing therein contained, shall not in any wise extend to any lawful Obligation indorsed with a Condition, nor to any Statute or Recognizance made and to be made for the Payment of a lesser Sum, so that the same Obligation, Statute or Recognizance be

No. 1.

37 Hen VIII. c. 9.

Reason—See 9 Vesey 229, *ex parte Elyan*, as to settling Accounts at the end of six Months and carrying on Interest, and the Observation as to Mercantile Transactions where there is no Agreement to lend, but they stipulate for mutual Transactions, each making Advances. Lord Eldon says, he admits that cannot be applied to a real Security, and you may not when the Debt comes to a certain Sum take a real Security and 5l. per Cent. I do not conceive that when any Debt is ascertained as due for Principal and Interest, it was his Lordship's Intention to lay down, that a valid Agreement could not be entered into for a valid Security for the whole with Interest thereon. In looking at the Cases in which Agreements for Compound Interest are relieved against as oppressive, if the Question be asked wherein the Oppression consists? the true Answer seems to be, in compelling the Borrower who has broken his Engagement, to place the Lender in the same Situation as if he had performed it, as the Lender may possibly have been obliged to borrow at Interest the Amount he was entitled to receive, and have incurred the actual Expense of paying that Compound Interest which he has, at least, been wrongfully prevented from acquiring; and it is very familiar in Courts of Equity to order Rests in taking an Account where there has been any Breach of confidential Duty, I conceive in Case of Fraud.

In the late Case of *Tarleton v. Backhouse*, Coop. 234, the Contract was for the Sale of a Partnership Interest for £40,000, to be paid with Interest by Instalments, the Interest at 5l. per Cent. on such Parts thereof as should from Year to Year remain due to be added to the Principal, and the several yearly Payments were computed and Bonds given for the same accordingly. The Case was argued on the Ground of the Transaction being not a Loan but a Sale. The Lord Chancellor was of Opinion, that as the Defendant might at the End of every Year have brought an Action and have had Judgment for the Principal and Interest then due on the Bonds; in Equity the Bonds could not be affected with Usury, as the Sum might be considered as having been called in and the Instalments paid. It is obvious that this Reasoning which I consider to be perfectly just in Principle, would (Authority out of the Question) extend to all Contracts for the Payment of Compound Interest on Loans.

In several Cases before Lord Roddendale, as Chancellor of Ireland, Relief was given against Leases granted by the Borrowers to the Lenders of Money, and which in that Court appears to have been a frequent Practice, and the Subject is familiarly described by the Expression of Lease and Loan. See *Browne v. O'Dea*, 1 S. and L. 115—*Drew v. Power*, id. 183—*Molloy v. Irwin*, id. 310—*Gubbins v. Creed*, 2 S. and L. 218, though a Lease for 999 Years be

Lease & Loan.

against extending the Doctrine. See *Prior v. Donnelly*, 1 Ball. and B. 27—*Willet v. Browne*, 4 B. 20—*Corbett v. Segrove*, 2 S. and B. 90.

It does not fall within the Object of this Note to enter into a Discussion of the Construction or Effect of Contracts with respect to Interest, but I will take the Liberty of so far transgressing the Limits of my proper Subject as to advert to the Question of allowing Interest upon simple Contracts without express Stipulation. I certainly remember several Cases in which Juries have been supported in giving Interest by Way of Damages for the Detention of the Debt, and the Case of *Holdepp v. Olway*, 2 Saund. 102, seems a strong Authority upon the Subject. In a Case of *Wright v. Seddon*, for the Salary of a Curate, tried before Buller, J. at Lancaster, March 1790, I distinctly remember the Jury giving a Verdict for Interest upon the Recommendation of the Judge, and in the Case of the *Huddersfield Canal Company v. Backley*, 3 T. R. 56, where the Defendant paid into Court the Amount of the Call which he was liable to, without Interest, and the Decision was in his Favour upon the principal Points in Question, so that the Question of Interest, which only amounted to 10s. became merely what is called a Norfolk Groat, and the Jury having given Interest, the Judgment was for the Plaintiff for that Amount, and Lord Kenyon said, there is no Doubt but the Jury may give

Of Interest at
Law on common
Contracts.

No. 1. made for a true, just and perfect Debt, or for the Performance of any other true Covenants, made or to be made upon a just and true Intent had between the Parties, other than in Cases of Usury, Interest, corrupt Bargains, Shift or Chevisance, ne yett shall extend to any true Intent, other than to such Recoveries, Fines, Feoffments, Releases, Confirmations and Grants, as shall be made upon Condition extending to Usury, Interest, corrupt Bargains, Shifts or Chevisance, any Thing in this Statute contained, or any Law, Statute or Ordinance heretofore had, used or made to the contrary notwithstanding.

Interest, not *eo nomine* as Interest, but as Damages for the Detention of the Debt, for non-performance of the Contract.—I apprehend, however, that the opposite Course of subsequent Authorities to the contrary is so strong, that nothing less than the Interposition of the Legislature can avail, in restoring the Power formerly exercised. It is to be lamented, that in establishing these Authorities, the Case which has been last cited was not sufficiently adverted to.

In *Trelawney v. Thomas*, 1 H. B. 308, upon Assumpsit for Work and Labour and Money paid, the Court held that the Jury might, in their Verdict, calculate Interest on the Money really advanced, but not on the Damages for Work and Labour. The leading Case in support of the modern Doctrine is *Walker v. Constable*, 1 B. and P. 306, in which the Court of Common Pleas upon the supposed Authority of *Moses v. Mc. Ferlan*, 2 Bur. 1005, ruled, that in such Action the Plaintiff could recover nothing but the net Sum received, without Interest. It is clear, that *Moses v. Mc. Ferlan* contains nothing directly applicable to the immediate Question, and only bears upon it as being a general Exposition of the Liberality of the Principles upon which that Action depends. At a very early Period after the Decision of *Walker v. Constable*, I took the Opportunity of expressing my Sentiments respecting it in an Essay in the *Action for Money had and received*, p. 121, and see *Tappenden v. Randall*, 2 B. and P. 467—*Hogan v. Page*, 1 B. and P. 337.

In *Montford v. White*, 2 B. and P. 337, the Defendant by Note in Writing, engaged to be answerable for Goods furnished to a third Person; at the Bottom of the Note was written "Credit till Christmas," and the Court held the Plaintiff entitled to Interest from the Time mentioned in the Note. But in *Gordon v. Swan*, 12 East. 419, when Goods were sold by Contract in Writing for a Price payable at six Months, and the Jury upon a Writ of Inquiry deputed their Willingness to give Interest as well as Principal, the Under-sheriff directed them, that in Point of Law the Plaintiff was not entitled to recover Interest, and upon an Application to set aside the Inquiry, Lord Ellenborough thought the Contract only meant, that the Vendee at all events should be called upon for Payment till the Time given, but that it was still a Contract for the Sale of Goods, and he thought the giving of interest should be confined to Bills of Exchange and such like Instruments, and to Agreements reserving Interest, and the Rule was refused. And in *Chilton v. Dragg*, 15 East. 225, the Court of King's Bench decided upon very full Argument, that Interest could not be recovered upon a simple Contract for Money lent, assuming such to be the established Practice.—Lord Ellenborough said, that it is the Rule for allowing Interest should be carried further than it had been, it must be done by the Legislature; but where Goods were sold upon an Agreement to pay by Bill at a certain Date, it was held that an Interest would have run upon the Bill if given, it might be recovered in satisfaction for the Price of the Goods brought after the Time when the Bill would have become due, *Mitchell v. Forre*, 15 East. 98. It is a constant Course in a Court of Equity upon giving Relief in respect of Money improperly obtained, to charge the Defendant with Interest, and certainly it is a very great Hardship that a Party who has improperly obtained the Money of another, for which the duty of Conscience is at Law, should be enabled to deprive the injured Person from the Fruits of his Property for the whole Time that he can have in the Recovery of it.—See *Jones v. Becker*, 2 Camp. 478—Public v. Meall, East.

According to the ancient Law of France, although Contracts for Interest were generally unlawful by being usurious, Interest was allowed by Way of Damages from the Time of commencing judicial Proceedings for the Recovery of the Debt.

No. 2.

13 Elizabeth, c. 8.—An Act against Usury.

WHEREAS in the Parliament holden the Seven and Thirtieth Year of the Reign of our late Sovereign Lord King HENRY the Eighth, of famous Memory, there was then made and established one good Act for the Reformation of Usury: By which Act the Vice of Usury was well repressed, and specially the corrupt Chevisance and Bargaining by way of Sale of Wares, and Shifts of Interest: And where since that Time by one other Act made in the fifth and sixth Years of the Reign of our late Sovereign Lord King EDWARD the Sixth, the said former Act was repealed, and new Provisoos for respressing of Usury devised and enacted: Which said latter Act hath not done so much good as we hoped it should, but rather the said Vice of Usury, and specially by way of Sale of Wares and Shifts of Interest, hath much more exceedingly abounded, to the utter Undoing of many Gentlemen, Merchants, Occupiers and others, and to the importable Hurt of the Commonwealth, as well for that in the said later Act there is no Provision against such corrupt Shifts and Sales of Wares as also for that there is no Difference of Pain, Forfeiture or Punishment upon the greater or lesser Exactions and Oppressions by Reason of Loans upon Usury:

II. Be it therefore enacted, That the said later Statute made in the fifth and sixth Years of the Reign of King EDWARD the Sixth, and every Branch and Article of the same, from and after the five and twentieth Day of June next coming, shall be utterly abrogated, repealed and made void: and that the said late Act made in the said seven and thirtieth Year of King HENRY the Eighth, from and after the said five and twentieth Day of June next coming, shall be revived and stand in full Force, Strength and Effect.

III. And be it further enacted, That all Bonds, Contracts and Assurances, collateral or other, to be made for Payment of any Principal or Money to be lent, or Covenant to be performed upon or for any Usury in lending or doing of any Thing against the said Act now revived, upon or by which Loan or Doing there shall be reserved or taken above the Rate of ten Pounds for the Hundred for one Year, shall be utterly void.

IV. And be it further enacted, That all Brokers, Solicitors and Drivers of Bargains for Contracts or other Doings against the said Statute now revived, whereupon shall be reserved or taken more than after the Rate of ten Pounds for the Loan of one hundred Pounds for a Year, shall be to all Intents and Purposes judged, punished and used as Counsellors, Attornies or Advocates in any Case of Perjury.

V. And forasmuch as all Usury, being forbidden by the Law of God, is Sin and Detestable, Be it enacted, That all Usury, Loan and forbearing of Money, or giving Days for forbearing of Money, by Way of Loan, Chevisance, Shifts, Sale of Wares, Contracts or other Doings whatsoever, for Gain, mentioned in the said Statute, which is now revived, whereupon is not reserved or taken, or covenanted to be reserved, payed or given to the Lender, Contractor, Shifter, Forbearer or Deliverer, above the Sum of ten Pounds for the Loan or forbearing of a hundred Pounds for one Year, or after that Rate for a more or lesser Sum or Time, shall be from the five and twentieth Day of June next coming punished in Form following; that is to say, That every such Offender against this Branch of this present Statute, shall forfeit, so much as shall be reserved by Way of Usury above the Principal, for any Money so to be lent or forborn: All such Forfeitures to be

13 Eliz c 8.

The Statute of 37 H 8 c 9, revived, and the Statute of 5 & 6 Ed 6, c 20 repealed, both which were made against Usury. Acc. 3 Inst 151. 2 Roll 240. Dyer 376. Cro Ll 20, 27.

The Statute of 5 & 6 Ed 6, c 20, repealed, and the Statute of 37 H 8, c 9, revived 1 Haw P C 88.

All Contracts and Assurances where, by above 10l in the 100l, shall be void. Noy 2. Hotley 25. Rot 689.

The Penalty of Brokers and Drivers of usury on Bargains. Co. Entr. 436

He that taketh 10l or less for the Loan of 100l shall forfeit the Interest only. 11 Jac 255. 5 Co 89.

No 2.
15 Eliz. c. 8

Where Magistrates
may let and let
to the Of
ficers thereof

The Statute of
37 Hen. 8. c. 9.
shall be construed
accordingly for the
repressing of Usury

Y what Case an
Officer shall be
punished by
the Ecclesiastical
Law.

recovered and employed as is limited for Forfeitures by the said former Statute now revived.

VI. And be it further enacted, That Justices of *Oyer and Detainer*, and Justices of Assize in their Circuits, Justices of Peace in their Sessions, Mayors, Sheriffs and Bailiffs of Cities, shall also have full Power and Authority to inquire, hear and determine of all and singular Offences committed against the said Statute now revived.

VII: And be it further enacted, That the said Statute now revived shall be most largely and strongly construed for the repressing of Usury, and against all Persons that shall offend against the true Meaning of the said Statute, by any Way or Device, directly or indirectly.

VIII. Provided always, That this Statute doth not extend, nor shall be expounded to extend unto any Allowances or Payments for the finding of Orphans, according to the ancient Rates or Customs of the City of London, or any other City where like Order is for the Custody of Orphans and their Goods, as is in the said City of London.

IX. Provided always, and be it further enacted by the Authority aforesaid, That if any Person or Persons shall, from and after the said Five and Twentieth Day of June, offend contrary to the said Statute revived by this present Act, made in the Seven and Thirtieth Year of the Reign of the said late King Henry the Eighth; That then all and every such Offender and Offenders shall and may also be punished and corrected, according to the Ecclesiastical Laws heretofore made against Usury: And that all and every Person and Persons offending in Usury, Shifts or Chevaunce, against this present Act, and not taking or receiving, but only after the Rate of Ten Pounds in the Hundred or under for a Year, shall be only punished by the Pains and Forfeitures provided and appointed by this Act, against such as shall not take or receive over and above the Rate of Ten Pounds in the Hundred for a Year, and not otherwise. This Act to continue and endure for and during the Space of Five Years next after the End of this present Parliament, and from thence unto the End of the first Session of the Parliament then next ensuing.

X And be it further enacted by the Authority aforesaid, That if this present Act shall not be continued in the first Session of the Parliament next ensuing the said Term of Five Years, and then in the same Session no other Statute or Provision made against Usury or corrupt Chevaunce; That then all and every the Laws and Statutes repealed by this Act shall remain and be of such like Force and Effect as if this present Act had never been had or made. 31 Jac. I. c. 17, made perpetual by 39 Eliz. c. 18.

No. 34

21 James I. c. 17.—An Act against Usury.

31 Jac. I.

37 H. 8. c. 9.
15 Eliz. c. 8.

None shall take
above the Rate of
Eight Pounds for
the Loan of an
Hundred Pounds
for a Year.

WHEREAS at this Time there is a very great Abatement in the Value of Land, and other the Merchandizes, Wares, and Commodities of this Kingdom, both at Home, and also in foreign Parts whether they are transported; and whereas divers Subjects of this Kingdom, as well the Gentry as Merchants, Farmers, and Tradesmen, both for their urgent and necessary Occasions, for the following their Trades, Maintenance of their Stocks and Employments, have borrowed, and do borrow divers Sums of Money, Wares, Merchandizes, and other Commodities; but by reason of the said general Fall and Abatement of the Value of Land, and the Prices of the said Merchandizes, Wares and Commodities, and Interest in

Loan continuing at so high a Rate as Ten Pounds in the Hundred Pounds for a Year, doth not only make Men unable to pay their Debts, and continue the Maintenance of Trade, but their Debts daily increasing, they are enforced to sell their Lands and Stocks at very low Rates, to forsake the Use of Merchandize and Trade, and to give over their Leases and Farms, and so become unprofitable Members of the Commonwealth, to the great Hurt and Hinderance of the same :

No 3.
21 Jac. L. c. 17.

II. Be it therefore enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That no Person or Persons whatsoever, from and after the Four and twentieth Day of June, which shall be in the Year of our Lord One Thousand Six Hundred Twenty and Five, upon any Contract to be made after the said Four and twentieth Day of June, shall take directly or indirectly, for Loan of any Monies, Wares, Merchandize, or other Commodities whatsoever, above the Value of Eight Pounds for the Forbearance of One Hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Time; and that all Bonds, Contracts, and Assurances whatsoever made after the Time aforesaid, for Payment of any Principal or Money to be lent or conveyed to be performed, upon or for any Usury, whereupon or whereby there shall be reserved or taken above the Rate of Eight Pounds in the Hundred as aforesaid, shall be utterly void; and that all and every Person and Persons whatsoever, which shall after the Time aforesaid, upon any Contract to be made after the said Four and twentieth Day of June, which shall be in the Year of our Lord 1625, take, accept, and receive, by Way or Means of any corrupt Bargain, Loan, Exchange, Chevisance, Shift, or Interest of any Wares, Merchandize or other Thing or Things whatsoever, or by any deceitful Way or Means, or by any Covin, Engine, or deceitful Conveyance, for the forbearing or giving Day of Payment for one whole Year, of and for their Money or other Things, above the Sum of Eight Pounds for the forbearing of One Hundred Pounds for a Year, and so after that Rate for a lesser or greater Sum, or for a longer or shorter Time, shall forfeit and lose for every such Offence the treble Value of the Monies, Wares, Merchandizes, and other Things so lent, bargained, sold, exchanged, or shifted.

III. And be it further enacted by the Authority aforesaid, That all and every Scrivener and Scriveners, Broker and Brokers, Solicitor and Solicitors, Driver and Drivers of Bargains for Contracts, who shall after the said Twenty-fourth Day of June, which shall be in the Year of our Lord 1625, take or receive, directly or indirectly, any Sum or Sums of Money, or other Reward or Thing for Brocage, soliciting, driving, or procuring the Loan or forbearing of any Sum or Sums of Money, over or above the Rate or Value of Five Shillings for the Loan or forbearing of One Hundred Pounds for a Year, and so ratably, or above Twelve-pence for making or renewing of the Bond or Bill for the Loan, or forbearing thereof, or for any Counter Bond or Bill concerning the same, shall forfeit for every such Offence Twenty Pounds, and have Imprisonment for Half a Year; the One Moiety of all which Forfeitures to be to the King our Sovereign Lord, his Heirs and Successors, and the other Moiety to him or them that will sue for the same in the same County where the several Offences are committed, and not elsewhere, by Action of Debt, Bill, Plaint, or Information, in which no Assize, Wager of Law, or Protection to be allowed.

A Scrivener that takes above the Rate of 5. for the forbearing of 100l. for 1 Year, or above 12d for the renewing of a Bond, shall forfeit 20l. and have Imprisonment for Half a Year.

IV. This Act to continue for the Space of Seven Years from the said Four and twentieth Day of June, which shall be in the Year of our Lord 1625, and so to the End of the First Session of Parliament then next following.

The Continuance of this Act.

No. 3.

21 Jac. I. c. 17.

The Practice of
Usury disallowed.

V. Provided, That no Words in this Law contained shall be construed or expounded to allow the Practice of Usury in point of Religion or Conscience. [Made perpetual by 3 Car. 1. c. 4. §. 5. 2 H. 3. c. 5. 9 H. 7. c. 6. 11 H. 7. c. 8. 37 H. 8. c. 9. 5 & 6 Ed. 6. c. 20: 13 El. c. 8.]

No. 4.

12 Charles II. c. 13.—An Act for the restraining the taking of excessive Usury.

12 Car. II. c. 13.

37 Hen. 8. c. 9.

Now shall take
above Six Pounds
for the Loan of an
Hundred Pounds
for a Year.

FORASMUCH as the Abatement of Interest from Ten in the Hundred in former Times hath been found by notable Experience beneficial to the Advancement of Trade and Improvement of Lands by good Husbandry, with many other considerable Advantages to this Nation, especially the reducing of it to a nearer Proportion with Foreign Soles with whom we traffic: And whereas in fresh Memory the like Fall from Eight to Six in the Hundred, by a late constant Practice hath found the like Success to the general Contentment of this Nation, as is visible by several Improvements: And whereas it is the Endeavour of some at present to reduce it back again in Practice to the Allowance of the Statute still in Force, to Eight in the Hundred, to the great Discouragement of Ingenuity and Industry in the Husbandry, Trade and Commerce of this Nation:

The Penalty.

It Be it, for the Reasons aforesaid, enacted by the King's most Excellent Majesty, and the Lords and Commons in this present Parliament assembled, That no Person or Persons whatsoever, from and after the Twenty-ninth Day of September in the Year of our Lord One Thousand Six Hundred and Sixty, upon any Contract, shall from and after the said Twentieth-ninth of September, take directly or indirectly for Loan of any Monies, Wares, Merchandize or other Commodities whatsoever, above the Value of Six Pounds for the Forbearance of One Hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Time: And that all Bonds, Contracts and Assurances whatsoever, made after the Time aforesaid for Payment of any Principal or Money to be lent, or covenanted to be performed, upon or for any Usury, whereupon or whereby there shall be reserved or taken above the Rate of Six Pounds in the Hundred, as aforesaid, shall be utterly void: And that all and every Person or Persons whatsoever, who shall after the Time aforesaid, upon any Contract to be made after the said Twentieth-ninth Day of September, take, accept and receive, by Way or Means of any corrupt Bargain, Loan, Exchange, Cheviance, Shift, or Interest of any Wares, Merchandize, or other Thing or Things whatsoever, or by any deceitful Way or Means, or by any Form, Engine or deceitful Conveyance, for the forbearing or giving Day of Payment for One whole Year, or part for their Money or other Thing, above the Sum of Six Pounds for the forbearing of One Hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Term, shall forfeit and lose for every such Offence the treble Value of the Monies, Wares, Merchandize and other Things so lent, bargained, sold, exchanged or shifted.

The Forfeiture
of a Scrivener that
shall take above
2s for the Forbearance
of 100l. for

III. And be it further enacted by the Authority aforesaid, That all and every Scrivener, and Scriveners, Broker and Brokers, Solicitor and Solicitors, Deeds and Drivers of Bargains for Contracts, who shall after the said Twentieth-ninth Day of September take or receive

directly or indirectly any Sum or Sums of Money, or other Reward or Thing, for Brokage, Soliciting, Driving or procuring the Loan, or forbearing of any Sum or Sums of Money, over and above the Rate or Value of Five Shillings for the Loan or Forbearing of One Hundred Pounds for a Year, and so rateably, or above Twelve-pence for the making or renewing of the Bond or Bill for Loan, or for forbearing thereof, or for any Counterbond or Bill concerning the same, shall forfeit for every such Offence Twenty Pounds, and have Imprisonment for half a Year; the One Moiety of all which Forfeitures to be to the King our Sovereign Lord, his Heirs and Successors; and the other Moiety to him or them that will sue for the same in the same County where the several Offences are committed, and not elsewhere, by Action of Debt, Bill, Plaint or Information; in which no Escoin, Wager of Law, or Protection to be allowed. [Confirmed by 13 Car. II. Stat. 1, c. 14.]

No. 4.
12 Car. II. c. 13.
and above 12d for making a Bond.

No. 5.

12 Anne, c. 16.—An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities.*

WHEREAS the reducing of Interest to ten, and from thence to eight, and thence to six in the Hundred, hath, from Time to Time, by Experience been found very beneficial to the Advancement of Trade, and Improvement of Lands: And whereas the heavy Burden of the late long and expensive War hath been chiefly borne by the Owners of the Land of this Kingdom, by Reason whereof they have been necessitated to contract very large Debts, and thereby, and by the Abatement in the Value of their Lands, are become greatly impoverished: And whereas by reason of the great Interest and Profit which hath been made of Money at Home, the Foreign Trade of this Nation hath of late Years been much neglected, and at this Time there is a great Abatement in the Value of the Merchandises, Wares, and Commodities of this Kingdom, both at Home and in Foreign Parts, whither they are transported; And whereas for the Redress of these Mischiefs, and the preventing the Increase of the same, it is absolutely necessary to reduce the high Rate of Interest of six Pounds in the hundred Pounds for a Year, to a nearer Proportion with the Interest allowed for Money in Foreign States: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person or Persons whatsoever, from and after the nine and twentieth Day of September, in the Year of our Lord One Thousand Seven Hundred and Fourteen, upon any Contract, which shall be made from and after the said nine and twentieth Day of September, take, directly or indirectly, for Loan of any Monies, Wares, Merchandize, or other Commodities whatsoever, above the Value of five Pounds for the Forbearance of one hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Time; and that all Bonds, Contracts, and Assurances whatsoever, made after the Time aforesaid, for Payment of any Principal, or Money to be lent or covenanted to be performed upon or for any Usury, whereupon or whereby there shall be reserved or taken above

12 Anne, c. 16.

No Person shall take above 5l per Cent. Interest.

All Bonds, &c. for a greater Rate, rest shall be void.

* This Act has the Effect of extending the preceding Statutes to Scotland.—
Sartees v. Allan, 2 Dow, 204.

No 5.
12 Anne, c. 18.
And Persons tak-
ing above shall pay
four treble the Va-
lue of the Monies,
&c.

the Rate of five Pounds in the Hundred ~~the~~ aforesaid, shall be utterly sold; and that all and every Person or Persons whatsoever, which shall after the Time aforesaid, upon any Contract to be made after the said nine and twentieth Day of September, take, accept and receive, by Way or Means of any corrupt Bargain, Loan, Exchange, Chet- vance, Shift, or Interest of any Wares, Merchandize, or other Thing or Things whatsoever, or by any deceitful Way or Means, or by any Covin, Engine, or deceitful Conveyance, for the forbearing or giving Day of Payment for one whole Year, of and for their Money or other Thing, above the Sum of five Pounds for the forbearing of one hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Term, shall forfeit and lose for every such Offence the twice Value of the Monies, Wares, Merchandizes, and other Things so lent, bargained, exchanged, or shifted.

No Scrivener, &c.
shall take above
5s for 100l for a
Year, for Brokerage,
&c nor above 12d
above a Stamp Du-
ties for making
or renewing any
Bond, &c.

II. And be it further enacted by the Authority aforesaid, That all and every Scrivener and Scriveners, Broker and Brokers, Solicitor and Solicitors, Driver and Drivers of Bargains for Comodities, who shall after the said nine and twentieth Day of September take or receive, directly or indirectly, any Sum or Sums of Money, or other Reward or Thing for Brokerage, soliciting, driving, or procuring the Loans or forbearing of any Sum or Sums of Money, over and above the Rate or Value of five Shillings for the Loan, or forbearing of one hundred Pounds for a Year, and so after that Rate, or above twelve Pence, over and above the Stamp Duties for making or renewing of the Bond or Bill for Loan, or forbearing thereof, or for any Counterbond or Bill concerning the same, shall forfeit for every such Offence twenty Pounds, with Costs of Suit, and suffer Imprisonment for Half a Year; the one Moiety of all which Forfeitures to be to the Queen's most Excellent Majesty, her Heirs and Successors, and the other Moiety to him or them that will sue for the same, in the same County where the several Offences are committed, and not elsewhere, by Action of Debt, Bill, Main, or Information, in which no Escrow, Wager of Law, or Protection shall be allowed.

No. 6.

14 George III. c. 79.—An Act for explaining an Act, made in the twelfth Year of the Reign of Queen ANNE, intituled, *An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities.*

4 Geo. III. c. 79.

WHEREAS large Sums of Money have been and may be lent, by his Majesty's Subjects in Great Britain, upon Mortgages, or other Securities, on Estates in the Kingdom of Ireland, and also in his Majesty's Colonies or Plantations in the West Indies; which Loans have been found to contribute greatly to the Improvement of the said Kingdom, Colonies, and Plantations: And whereas it has frequently been found convenient to execute such Mortgages and Securities, and the Transfers or Assignments thereof, in Great Britain: And whereas Doubts have arisen, whether such Loans, and the Mortgages or Securities for the same, and the Transfers or Assignments thereof, when made and executed in Great Britain, are as valid and effectual as when made and executed in the said Kingdom of Ireland, Colonies, Plantations, or Dependencies; and, by reason of an Act, passed in the Twelfth Year of the Reign of her late Majesty Queen ANNE, intituled, *An Act to reduce the Rate of*

* Interest, without any Prejudice to Parliamentary Securities, whether No. 6.
 * such Mortgages or Securities are valid and effectual where the Rate 14 Geo. III. c. 79.
 * of Interest thereby reserved or made payable is more than five Pounds
 * per Centum, though such Interest does not exceed the Rate of
 * Interest allowed and established by the Law of the Kingdom of
 * Ireland, Colony, Plantation, Country, or Place, in which the
 * Estates comprised in such Mortgages or Securities respectively are;
 * and whether his Majesty's Subjects, in Great Britain have not, or
 * may not, become subject or liable to Penalties or Forfeitures by
 * receiving or taking Interest for the Sums of Money really and bona
 * fide advanced or lent on such Mortgages or Securities, at the Rate
 * of Interest allowed and established by the Law of the Kingdom,
 * Colony, Plantation, Country, or Place, wherein the mortgaged
 * Estates respectively lie: For obviating such Doubts, be it enacted by
 the King's most Excellent Majesty, by and with the Advice and
 Consent of the Lords Spiritual and Temporal, and Commons, in this
 present Parliament assembled, and by the Authority of the same,
 That all Mortgages and Securities which, by any of his Majesty's
 Subjects, already have been made and executed in Great Britain, of
 or concerning any Lands, Tenements, Hereditaments, Slaves, Cattle,
 or other Things, lying and being in the Kingdom of Ireland, or in
 any of the said Colonies, Plantations, or Dominions, or any Estate or
 Interest therein, to any of his Majesty's Subjects, for securing the
 Repayment of the Sums of Money thereon respectively really and bona
 fide advanced and lent, with Interest for the same; and all Bonds,
 Covenants, and Securities, for Payment of the same Sums of Money
 and Interest respectively, and all Transfers or Assignments which
 have been made and executed in Great Britain of such Mortgages,
 Securities, or Bonds, to any of his Majesty's Subjects; shall be as
 good, valid, and effectual, to all Intents and Purposes whatsoever, as
 such Mortgages, Securities, Bonds, Covenants, Transfers, or Assign-
 ments, would have been, if the same had been made and executed in
 the Kingdom, Island, Plantation, Country, or Place, where the
 Lands, Tenements, Hereditaments, Slaves, Cattle, or other Things
 mentioned and comprized in any such Mortgage, Security, Transfer,
 or Assignment, as aforesaid, severally lie or are; and that none of his
 Majesty's Subjects in Great Britain shall be subject or liable to any of
 the Penalties or Forfeitures in the said Act, made in the twelfth Year
 of her said late Majesty's Reign, by receiving or taking Interest for the
 Sum or Sums of Money really and bona fide advanced or lent on any
 such Mortgage, Security, Bond, Covenant, Transfer, or Assignment,
 as aforesaid, at the Rate of Interest allowed and established by the Law
 of the Kingdom, Colony, Plantation, Country, or Place, wherein
 the mortgaged Premises respectively lie or are.

All Mortgages,
 &c. of Lands in
 Ireland, or the Co-
 lonies, &c.

to be as effectual,
 as if executed in
 the Place, &c.

and no British
 Subject liable to
 Penalties.

Transfers of such
 Mortgages, &c. va-
 lid.

II. And be it further enacted by the Authority aforesaid, That
 all Mortgages and Securities which, by any of his Majesty's Subjects,
 after the passing of this Act, shall be made and executed in Great
 Britain, of or concerning any Lands, Tenements, Hereditaments,
 Slaves, Cattle, or other Things, lying and being in the Kingdom of
 Ireland, or in any of the said Colonies, Plantations, or Dominions,
 or any Estate or Interest therein, to any of his Majesty's Subjects, for
 securing the Repayment of the Sums of Money thereon respectively
 to be really and bona fide advanced and lent, with Interest for the
 same; and all Bonds, Covenants, and Securities, for Payment of the
 same Sums of Money, and Interest respectively, and all Transfers or
 Assignments which, after the passing of this Act, shall be made and
 executed in Great Britain of such Mortgages, Securities, or Bonds,
 to any of his Majesty's Subjects, shall be as good, valid, and effectual,
 to all Intents and Purposes whatsoever, as such Mortgages, Securities,

* No. 6. Bonds, Covenants, Transfers, or Assignments, would be if the same
 14 Geo III c. 79. were made and executed in the Kingdom, Island, Plantation, Country, or Place, where the Lands, Tenements, Hereditaments, Slaves, Cattle, or other Things to be mentioned or comprised in any such Mortgage, Security, Transfer, or Assignment, as aforesaid, severally lie or are; and that none of his Majesty's Subjects in *Great Britain* shall be subject or liable to any of the Penalties or Forfeitures in the said Act, made in the twelfth Year of her said late Majesty's Reign, by receiving or taking Interest for the Sum or Sums of Money to be really and *bona fide* advanced or lent on any such Mortgage, Security, Bond, Covenant, Transfer, or Assignment, as aforesaid, so as the Interest so to be received or taken do not exceed the Rate of six Pounds for one hundred Pounds for a Year; the aforesaid Act of Parliament, or any other Law or Statute to the contrary notwithstanding.

Not to make
 good such Mort-
 gage, if advanced
 more than Lands
 worth.

III. Provided always, and it is hereby declared, That this Act shall not make good, valid, or effectual, any such Mortgage, Security, Bond, Covenant, Transfer, or Assignment, where the Lender or Lenders of any Sum or Sums of Money has or have knowingly advanced or lent, or shall knowingly advance or lend thereon, more Money than the Lands, Tenements, Hereditaments, Slaves, Cattle, or other Things, in such Mortgages, Securities, Transfers, or Assignments, mentioned or comprised, or to be mentioned or comprised, was, were, or shall be, at the Time or Times of advancing or lending such Sum or Sums of Money as aforesaid, really and *bona fide* worth, to be sold.

Borrowing Sums
 exceeding the Value,
 &c. to forfeit
 triple the Value

IV. And be it enacted by the Authority aforesaid, That all and every Person or Persons, borrowing any Sum or Sums of Money under the Authority of this Act, upon any such Lands, Tenements, Hereditaments, Slaves, Cattle, or other Things, as aforesaid, exceeding the Value which the same shall be, at the Time of borrowing such Sum or Sums of Money, really and *bona fide* worth, to be sold over and above all Incumbrances which shall then affect the same, shall forfeit treble the Value of the Sum borrowed; the one Half to be paid to the Informer, the other Half to the Treasurer of the Royal Hospital for Seamen, at *Greenwich*, in the County of *Kent*, or to his sufficient Deputy or Agent, for the Use of the said Hospital.

Mortgages to be
 registered in the
 Colony, &c.

V. Provided also, and be it enacted, That all such Mortgages, or other Securities granted under the Authority of this Act, by which such Lands, Tenements, Hereditaments, Slaves, Cattle, or other Things, are intended to be charged or affected, shall be registered within the Kingdom, Island, Colony, Plantation, Country, or Place, where the said Lands, Tenements, Hereditaments, Slaves, Cattle, or other Things, severally lie or are, within the Time limited by the Laws of such Kingdom, Island, Colony, Plantation, Country, or Place, otherwise the same shall be subject to the several Provisions and Penalties contained in the said Act, made in the twelfth Year of her late Majesty Queen Anne, in such Manner as the same would have been if this Act had never been passed, unless the Mortgagee, or other Person or Persons, for whose Behoof such Mortgage or other Security shall have been made or granted, shall have *bona fide* used his or their utmost Endeavour to cause the same to be registered within the Time herein-before limited for that Purpose.

PART III. CLASS VI.

ANNUITIES.

No. I.

17 George III. c. 26.—An Act for registering the Grants of Life Annuities; and for the better Protection of Infants against such Grants.*

‘**W**HEREAS the pernicious Practice of raising Money by the Sale of Life Annuities hath of late Years greatly increased, and is much promoted by the Secrecy with which such Transactions are conducted; be it therefore enacted by the King’s most Excellent

17 Geo. III. c. 26.

* This Act has produced a greater Number of judicial Decisions than any other which has passed since the Statute of Frauds; and in Proportion to the limited Nature of the Subject has been perhaps more the Object of judicial Examination than any other in the Statute Book. The ostensible Object of passing such an Act was the restraining Impositions upon Persons whose Imprudence was supposed to render them an easy Prey to others more designing; but the whole Series of Decisions which it has given rise to are distinguished by one leading characteristic Feature, the Attempt to invalidate deliberate Contracts in consequence of some Unskillfulness or Inadvertence in endeavouring to comply with the Formalities which it prescribes, and which Formalities are stated in so vague and indistinct a Manner, that it was impossible for any Precaution to have adhered to them according to the judicial Exposition which they have received: so that it might almost be supposed that the Object of the Framers had been to suppress and extinguish the Contract entirely, not by direct Prohibition, but by involving it in Difficulties, which no Skill or Prudence could overcome. The Prejudice against this Species of Contract might be abated by reflecting that few Persons would be willing to advance their Money by way of Loan, depending for the Repayment upon the Duration of a mere temporary Interest, that it is always at the Option of a Person entitled to Property of such Description to dispose of the Property itself, if it is more beneficial to himself, than merely to subject it to a particular Charge, that the Competitors for obtaining Property by Annuity would have reduced the general Rate of Purchase if the Advantages arising from such Property were (all Circumstances considered) of such an excessive Nature as Courts of Justice have sometimes supposed, and that the general Inadequacy of the Price, in Proportion to the supposed actual Value, has, in a great Measure, arisen from the Precariousness of the Security in consequence of the Difficulties in which it is entangled by the Operation of the Law. When some Writers have reprobated this Contract upon the Ground that Persons have refused to advance Money upon undisputed Security of fee-simple Property, but have purchased an Annuity out of the same Property, clearing above five per Cent. after Payment of Insurance, they have done no more than shew that Interest at five per Cent. although the legal Measure was not the actual Value of the Use of Money to the Party advancing it, not reflecting that a Man has

No. 1.
17 Geo. III. c. 26.

Memorial of all
Deeds, &c.
for
granting Life An-
nuities, shall be
enrolled in Chan-
cery, &c.

Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That a Memorial of every Deed, Bond, Instrument, or other Assurance, whereby an Annuity or Rent

no more Claim to the Money of another than to his House or Habitation, which may be sold or let upon such Terms as may accord with the mutual Convenience of the Parties. The reputed Proposer of the Measure having long filled high and important Situations, it became a Kind of Fashion to regard the Measure itself as a signal Instance of legislative Wisdom, but in many modern Determinations the true Character of it has been more accurately recognized. Nothing can be more correct than the following Observation of Lord Eldon—"The Misfortune is that to those who *mean improperly*, the Act holds out a Language they cannot be expected to understand, the Courts not understanding it, and it embarrasses those meaning to engage in a righteous Transaction by throwing round it Doubts from which no Advice can disentangle them."—*Duff v. Atkinson*, 8 Vesey, 577; and the Legislature has at length interposed by Statute, 53 Geo. III. c. 141, (No. 2 of this Class) to diminish at least with respect to future Contracts the Difficulty of a fair and just Compliance with the Intention of the Law. As the last Act has however only a prospective Operation, and as many of the Provisions of the preceding one are repeated, it is proposed to include in the present Note a general Summary of the Decisions which have taken place upon its Construction under the following Heads:—

- I. The Annuities to which the Act does or does not extend.
- II. The Memorial and Enrolment.
- III. The Deeds by which the Annuity is granted, and herein of the Sufficiency of the Consideration.
- IV. The Exceptions with respect to Annuities secured by Lands in Fee or Tail, or by Transfer of Stock.
- V. The Invalidity arising from a Non compliance with the Act.
- VI. The Proceedings for carrying the Act into effect.
- VII. The Consequences of invalidating the Annuity.
- VIII. Of Assignments of Annuities.

I. In *Latties v. Holmes*, 4 T. R. 660, it was held, that the Act applied to all Annuities granted after the Commencement of the Sessions, by the Effect of the general Rule, that all the Acts of the Sessions should relate to the first Day; this Determination was apparently the Occasion of the Act 33 Geo. III. c. 13, by which the Day of the Royal Assent is required to be indorsed on all Acts of Parliament, from which Day alone their Operation is to take place.

An Assignment of a Life Interest in Stock in trust, to pay to A. B. an annual Sum, and the Surplus to the Grantor, with a Covenant to make up any Deficiency of the annual Payment, and to pay a proportionate Share in case of the Death of the Assignor, between the Days of Payment of the Dividends, is an Annuity within the Act, but a *bona fide* Sale of Dividends is not—*Browne v. Like*, 14 Ves. 302. The Act only extends to Annuities granted in Consideration of Something paid; and therefore it was decided in *Crespigny v. Wittenoom*, 4 T. R. 790, that it did not so extend to an Annuity agreed to be paid by one Partner to another, upon retiring from Business, it being the Opinion of the Court that it was apparent, from the Preamble and the different Clauses, that the Legislature did not intend that there should be any Memorial of such an Annuity. Lord Kenyon said, it seemed to him that the Anxiety of some Members of the House induced them to insert the last Clause after the Act was first drawn; but he thought that the first Section could never have been extended to the Cases mentioned in the last, if they had not been excepted. The same Point was also ruled in *Horn v. Horn*, 7 East. 529. So the Act does not extend to an Annuity in Consideration of giving up a Business and assigning Book Debts, Stock in Trade, or Household Furniture—*Hutton v. Lewis*, 5 T. R. 659.—*See* *dem. Johnston v. Phillips*, 1 Taunton, 336.

II. The twenty Days within which the Memorial must be registered are exclusive of the Day of Execution—*ex parte Fallon*, 5 T. R. 283.

The Memorial must express every Deed, Bond, Instrument, or other Assurance for the Annuity.

Charge shall, from and after the passing of this Act, be granted for one or more Life or Lives, or for any Term of Years or greater Estate determinable on one or more Life or Lives, shall, within twenty Days of the Execution of such Deed, Bond, Instrument, or other Assu- No. 1.
17 Geo. III. c. 28.

This includes Deeds for securing Annuities as well as Deeds granting them.—Hood v. Burlington, Vesey, jun. 29—Roshier v. Hurdiss, 5 T. R. 678. A Will which the Grantor was required to make and deposit with the Grantee, and to make Affidavit that she would not revoke it, *ex parte* Mackenzie, 4 Taunt. 323.

The Omission of stating a Bond to pay a Sum of Money, if the Grantor goes abroad in a military Capacity, vacates the Annuity—Chawner v. Whaley, 3 East. 560.

If some Securities are only noticed in the Recital of the Annuity Deed, it is not sufficient—Van Braam v. Isaacs, 1 B. & P. 451.

It is not necessary, where an Annuity is granted under a Trust Deed to raise Money by Annuities, to enroll the Trust Deed—O'Callaghan v. Ingilby, 9 East. 135.

Nor where an Annuity Bond is assigned to secure a smaller Annuity to enroll the first Bond—Henderson v. Countess of Glencairn, 2 Taunt. 235.

In *ex parte* Chester, 4 T. R. 694, the Court of B. R. expressed an Opinion, that only the particular Deed, not truly set forth in the Memorial, was void; but in the Duke of Bolton v. Williams, 2 Vesey, jun. 138, 4 Bro. Ch. 310, Lord Loughborough held, that all the different Parts made but one Assurance, that the Object was, that all the component Parts should be set forth, and that a Memorial that does not contain every Assurance is not valid. He intimated, that upon Inquiry the Opinion of the Court of King's Bench was expressed with Reference only to the Mode of Application for setting aside the Securities.

In Hart v. Loyelace, 6 T. R. 471, Lord Kenyon said, "I am not prepared to say whether or not all the Instruments given to secure an Annuity must be set aside because one only is not properly registered. The Cases upon the Subject are not reconcileable, but in the latest of them, Lord Loughborough, who drew the Annuity Act, decided, that if any of the Deeds constituting the Assurance for the Annuity were not properly inrolled all the Instruments were void. We are not called upon now to determine that Point, but the strong Inclination of my Opinion is, that any Defect in the Memorial of one of the Deeds will vitiate the whole Assurance."

The Decisions in subsequent Cases seem to take this Opinion for granted, and the Reasons stated for it by Lord Loughborough are very strong; but I cannot forbear observing, that in many of the Cases upon the Subject the Name of Lord Loughborough is adduced as giving more Weight to particular Opinions than is consistent with the legitimate Principles of judicial Reasoning.

The Construction of an Act of Parliament, as of any other Instrument, is to be deduced from the Language of the Instrument itself, and not from any particular Communications, as to the Objects or Opinions of the Individuals reported to have framed it, and which may not have accorded with the Views of those who concurred in giving it Validity by their Assent, and nothing could be a greater Extravagance than, in the Administration of Justice, to form one Opinion upon the mere Perusal of the Instrument itself, and to act upon another from extrinsic Considerations, and if these extrinsic Circumstances cannot be fairly used in Opposition to a given Opinion, can they form any proper or legitimate Ingredient in the Support of it?

The Memorial must set out a Warrant of Attorney to confess Judgment.—Davidson v. Lord Foley, 2 H. B. 12—Hopkins v. Waller, 4 T. R. 463.

It need not set out the Judgment signed thereon.—Sherson v. Oxlade, 4 T. R. 524.

Secus as to a Judgment which is the only Security.—*Ibid.* As to the Necessity of stating a Fine, or the Effect of stating it inaccurately, *quære*.—Bradford v. Burland, 14 East. 445. A Memorial of a joint and several Bond, as several is insufficient.—Willey v. Cawthorne, 1 East. 398.

But the Memorial of a Bond by A. and B. may be explained by a subsequent Part, setting forth a Recital of it as joint and several.—Coare v. Giblett, 3 East. 461.

It was held that the Memorial must express, that the Obligor in a Bond binds *his Heirs*, if such be the Fact.—Horwood v. Underhill, 10 East. 123;

No. 1. 17 Geo. II. c. 25. rance, be enrolled in the High Court of Chancery; and that every such Memorial shall contain the Day of the Month, and the Year when the Deed, Bond, Instrument, or other Assurance, bears Date, and the Name of all the Parties, and for whom any of them are

so *Purling v. Parkhurst*, 2 Taunt. 237; and the Omission is not cured by stating the Condition, that if the Grantor, his Heirs, &c. shall pay, &c. *ibid.*; and see *Denne v. Dupuis*, 11 East. 34. But the Decision of *Horwood v. Underhill* has been since reversed in the Exchequer Chamber, 4 Taunt. 346.

A Declaration in a Deed, that no Execution shall issue on a Warrant of Attorney, is not sufficiently described by stating a Declaration that it was for better securing the Annuity as therein mentioned.—*Cunningham v. Mackenzie*, 2 B. & P. 598, and see *Orton v. Knight*, 3 B. & P. 153.

It is sufficient to state an Assignment of a Salary "of so much per Annum," without stating how it arises.—*Watts v. Millard*, 5 T. R. 598.

It is not necessary to mention the particular Estates of all the Grantors, if the Estates in a County are charged, and so stated.—*O'Callaghan v. Ingilby*, 9 East. 135.

Whether the Estates charged are necessary to be mentioned at all, *quare, ibid.*

Nor to state Power of Distress or Entry, except so far as they create a Trust; nor Covenants of the Grantors for Payment, *ibid.*; and see *Defaria v. Sturt*, 2 Taunt. 225, unless they modify the Grant itself.—*Mouys v. Leake*, 8 T. R. 411.

Secus as to Covenant by Trustees not to revoke a Power of Attorney to receive Dividends.—*Duff v. Atkinson*, 8 Vesey, 577.

Nor that a Purchaser of the Annuity was to be paid from the last Quarter Day to the Death.—*Ince v. Everard*, 6 T. R. 545.

Note.—Those Cases only respecting the Contents of Deeds are stated under this Head, which are not referable to particular Subjects mentioned in the Act, and which are mentioned separately.

2. The Date.

Duke of Bolton v. Williams, 2 Ves. jun. 138, 154.

3. The Parties.

4. For whom any of them are Trustees.

It is not sufficient to state, that the Assurance was made upon the *Trusts therein mentioned*, without specifying the Trusts.—*Toldervy v. Allan*, 5 T. R. 480.—*Denn dem. Dolman v. Dolman*, 5 T. R. 641.

Secus if there were no other Trusts than those specified.—*Toldervy v. Allan*.

The Trusts with Respect to a Lien on the Estate, such as Payment of Taxes, need not be stated.—*Ibid.*

A Memorial of a Demise of a Term in Trust for better securing the Annuity, with such Powers and in such Manners as are particularly mentioned, ruled sufficient upon the Face of it; it being evident, that the Party was a Trustee for the Annuitant, and it not appearing that there was a Trustee for any other Person.—*Defaria v. Sturt*, 2 Taunt. 225. *Mansfield, C. J.* said, "Now leaving all the Cases and Arguments about this UNFORTUNATE ACT out of the Case, let any one having read this Deed be asked for whom there is a Trustee."

A Trust to permit the Owner of the Premises to receive the Rents until Default, and in Case of Default for sixty Days, to raise the Arrears, &c. by Sale or Mortgage, is not sufficiently described by stating the Party to be a Trustee nominated on the Part of the Grantee.—*Askew v. Makreth*, Dom. Proc. N. R. 214. Nor by describing the Deed as containing the usual Powers of Entry and Distress.—*Des Enfants v. O'Brien*, 8 East, 559; and see *Bradford v. Burland*, 14 East, 445.—*Taylor v. Johnson*, 8 T. R. 184.

The Memorial must state a Trust to pay the extra Expence of insuring, in Case of the Grantor leaving the Kingdom.—*Cummins v. Isaac*, 8 T. R. 183; see *Chawner v. Whaley*, *supra*, (1.)

A contingent Interest, (*e.g.* a Trust to pay the Annuity to the Husband after the Death of the Wife.)—*Hood v. Burton*, 2 Vesey, jun. 29.

Trustees, and of all the Witnesses; and shall set forth the annual Sum or Sums to be paid, and the Name of the Person or Persons for whose Life or Lives the Annuity is granted, and the Consideration or Considerations of granting the same; otherwise every such Deed, No. 1. 17 Geo. III. c. 28.

5. All the Witnesses.

It is not sufficient to state, that all the Instruments were attested by A. B. C. and D. or one of them.—*Hart v. Lovelace*, 6 T. R. 471.

A Memorial, stating the Deeds to be attested by A. B. C. and D. is insufficient if all of them are not attested by all those Witnesses.—*Ex parte Mackreth*, 2 East. 563.

But if a Deed between A. B. and C. is stated to be executed by A. and C. in the Presence of E. and F. it is no Objection, that it was also executed by B. in the Presence of those Witnesses; for it is not necessary to specify what Signatures the Witnesses respectively attested.—*Orton v. Knight*, 3 B. & P. 153.

The Omission of the Christian Name of one of the Witnesses, as attesting one of the Instruments, does not defeat the Annuity, the Name being truly stated as to the Attestation of the other Instruments.—*Watts v. Millard*, 5 T. R. 598. It is sufficient to state, that the Securities were executed in the Presence of A. B. without adding that he attested them.—*Wallis v. Lade*, 4 Taunt. 761.

6. The Life or Lives for which the Annuity is granted.

7. The Consideration or Considerations of granting the same.

Bank Notes may be described as Money.—*Wright v. Reed*, 3 T. R. 654—*Cousins v. Thompson*, 6 T. R. 335.

Promissory Notes, or Country Bank Notes, must be specifically stated.—*Rumball v. Murray*, 3 T. R. 298—*Morris v. Wall*, 1 B. & P. 208.

So a Banker's Check and the Time of its becoming due.—*Berry v. Bentley*, 6 T. R. 690—*Poole v. Cabares*, 8 T. R. 328.

If received in Money by the Grantor before the Execution of the Deeds, it may be stated as Money.—*Ex parte Michell*, 2 East, 137.

The Sum paid for a former Annuity, not registered, but renewed from Time to Time, with a further Sum given for a further Annuity, may be stated as an entire Sum.—*Symmons v. Mortimer*, 5 T. R. 139.

The whole Money may be stated as paid, although the fair Expences of the Writings are immediately paid out of it.—*Mouys v. Leake*, 8 T. R. 411—*Philips v. Crawford*, 9 Ves. 214, 13 Ves. 475. In the Duke of Bolton v. Williams, 2 Ves. 153, the Omission of such Payments was held to vitiate the Annuity, but there were many other Grounds on which the Annuity in that Case was set aside.

Secus as to a Charge for Commission by the Grantee himself, being a Solicitor.—*Broomhead v. Eyre*, 5 T. R. 597.

When Part of the Consideration is the giving up a former Annuity, it cannot be stated as Money.—*Wasburn v. Birch*, 5 T. R. 472.

Neither can Money previously lent upon Promissory Notes which were given up.—*Kirkman v. Price*, 1 H. B. 309.

Nor Money retained by the Grantee, with the Consent of the Grantor, for a Debt due to the former by the Attorney of both Parties, and accounted for by a Receipt from the Grantor to the Grantee, and a Promissory Note from the Attorney to the Grantor.—*Watts v. Millard*, 5 T. R. 598.

Ruled that a Memorial of Payment to A. B. and C. some or one of them, is void.—*Vaux v. Ansell*, 1 B. & P. 224.

The Necessity of stating to whom the Payment was made is in this Case taken for granted.

The Deed must express by whom the Consideration was paid, but not the Memorial; per Eyre, Ch. J. *ex parte Ansell*, 1 B. & P. 63. The Contrary is laid down by Lord Loughborough, in *Williams and the Duke of Bolton*, 2 Vesey, jun. 152. See *Crawford v. Philips*, post III.

It is sufficient if the Consideration is stated by Way of Recital.—*Sowerby v. Harris*, 4 T. R. 494—*Hodges v. Money*, 4 T. R. 500.

The Consideration need only be stated once in the Memorial, although mentioned in all the Deeds.—*Hodges v. Money*, 4 T. R. 500.

No. 1. Bond, Instrument, or other Assurance, shall be null and void to all Intents and Purposes.

Before Judgment be entered upon any Warrant of Attorney, a Memorial shall be inrolled.

II. And be it further enacted, That before any Judgment shall be entered of Record upon any Warrant of Attorney for recovering or

It is not necessary to state the nominal Consideration of Ten Shillings.—*Ince v. Everard*, 6 T. R. 545.

It is in Respect of its forming a Part of the Consideration that an Agreement for the Redemption of the Annuity must be stated.—*Steadman v. Purchase*, 6 T. R. 737.

Rule for setting aside Annuity, on Account of an Agreement for Redemption indorsed, discharged—it not appearing to have been made prior to the Execution of the Deed.—*Schuman v. Weatherhead*, 1 East; 537.*

Where upon Redemption of an Annuity it was agreed, that if the Grantor should afterwards wish to borrow Money upon the same Terms, the same Deeds should be given as a Security; and upon an Advance of Money, the Deeds were given accordingly, without fresh Inrolment: the Court directed them to be cancelled.—*Hammond v. Foster*, 5 T. R. 635.

If a correct Memorial be incorrectly inrolled, and the Officers afterwards rectify the same before any Proceeding had, the Court finding the inrolment right will not inquire further.—*Garrick v. Williams*, 3 Taudt. 540.

III. The third Section requires the Deeds to set forth the Consideration; and by whom paid, that the Consideration shall be in Money only.

For the Manner of stating the Consideration see the preceding Cases respecting the Memorial.

If the Consideration is paid by an Agent of the Grantee, it must be so stated.—*Dalmer v. Barnard*, 7 T. R. 248.

So by a Banker's Clerk.—*Askew v. Macreth*, 1 N. R. 214, Dom. Proc.

It is sufficient if the Fact appears by the Receipt indorsed on the Deed.—*Philips v. Crauford*, 9 Ves. 214, 13 Ves. 517.

It is not necessary to state the Name of the Agent who receives the Money.—*Crauford v. Phillips*, 2 N. R. 141.

Nor the Time when the Payment was made.—*Coare v. Giblett*, 4 East. 85.—*Philips v. Crauford*, 9 Ves. 214, 13 Ves. 475.

But in these Cases the Day of Payment to the Grantor's Agent was in fact stated.

"If indeed any Matter had been agreed upon by which Payment of the Consideration was to be delayed to the Disadvantage of the Grantor, I should not have thought the Consideration fully and truly stated"—per *Chambre*, J. in *Crauford v. Phillips*.

If there be a Bond and Warrant of Attorney it is sufficient to state the Consideration in the Bond.—*Hodges v. Money*, 4 T. R. 500.

As to the SUFFICIENCY of CONSIDERATION.—Notwithstanding the Enactment that the Consideration shall be as Money only, it is not necessary that it shall be paid in Monies numbered.

Money paid for the Redemption of a former Annuity is a sufficient Consideration.—*ex parte Fallon and Wife*, 5 T. R. 283.

So an antecedent Debt.—*Kelf v. Ambrose*, 7 T. R. 551.†

As to the Manner of stating such Consideration, *vi. ibid.*

* See *Saunders v. Hardinge*, 5 T. R. 9, in which a Memorial stated a Deed Poll assigning an Annuity of £11. and containing a further Grant of an Annuity of 7l. the Consideration of which was duly stated; and also a Bond for the Payment of an Annuity of 31l. and a Warrant of Attorney to secure it, and Judgment on the Warrant of Attorney was set aside for not stating the Consideration of the Bond—it not sufficiently appearing to be for securing the same Annuity as the Deed Poll.

† Per Lord Kenyon: The grant Mitchell intended to be provided against by the Legislature, in this Act, was the Fraud and Circumvention of those who took Advantage of the Necessities of distressed Parsons, desirous of taking up Money upon Annuities, by putting off Goods upon the latter, at their own Price, instead of Money, which Goods they were afterwards to dispose of at a considerable Loss. For this Reason the Legislature required, that the Consideration should be in Money and not in Goods. But it is not necessary, nor was it ever intended, that the Money should be actually told down at the Time of the Grant. If it be a *bona fide* Transaction, and the Money be really paid to the Grantor, or to his Use, it satisfies the Words and Meaning of the Act.

securing the Payment of any Annuity or Rent-charge that hath already been granted for one or more Life or Lives, or for any Term of Years or greater Estate determinable upon one or more Life or Lives, and before any Execution shall be sued out, or Action brought on any

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IV. *The Exception as to Annuities secured on Lands of equal or greater annual Value in Fee or Tail-in Possession, or by Transfer of Stock.*

This Exception extends to Grants made by Persons having a joint Power of Appointment over the Fee, executing such a Power by granting an Annuity in Execution of such Power.—*Halsey v. Hales*, 7 T. R. 194.

To an Annuity secured on Lands in Fee of equal Value, and also on leasehold Premises—*ex parte Mitchell*, 2 East. 137.

To an Annuity secured on an Equity of Redemption, the annual Value being more than the Interest—*Amburst v. Skynner*, 12 East. 263—*Tucker v. Thurstan*, 17 Vesey, 131.

Upon a summary Application, the Court will not try the Value of the Land upon Affidavit, but direct an Issue—*Saunders v. Wright*, 1 Taunt. 369.

The Exemption as to Stock relates only to Stock actually transferred, and not an Authority by a Person entitled to Dividends for Life, for Trustees to apply them in Payment of an Annuity—*Hudson v. Skinner*, 6 T. R. 596—*Duff v. Atkinson*, 8 Vesey, 577.

V. Of the Invalidity arising from a Non-compliance with the Act.

In *Crossley v. Arkwright*, 2 T. R. 603, it was ruled, that an Annuity affected by the Act was absolutely void; and that upon an Execution against a Person to whom Goods had been assigned in Consideration of such an Annuity, the Sheriff might return *nulla bona*.

One Point of the Decision was, that the Grantor of the Annuity having subsequently to the Plaintiff's Execution taken the same Goods in Execution, had neglected to vacate the Annuity, supposing it only voidable by the Parties.

The invalidity of the particular Annuity was taken for granted; but there may be considerable Room for doubting upon subsequent Determinations, whether it was really a Case within the Act.

An Execution for an Annuity void under the Act set aside upon the Application of a Creditor, having a subsequent Execution—*Saunders v. Hardinge*, 5 T. R. 9.

An Annuity void under the Act is not a Forfeiture of a life Interest, granted upon Condition not to charge or incumber it—*Denn. dem. Dolman v. Dolman*, 5 T. R. 641.

VI. Proceedings to set aside Annuities.

1. At Law

The Power, in Section 4, of applying to the Court for the Deeds to be cancelled, is confined to the Grantor, and does not extend to an Assignee of the Premises subject to the Annuity, although the Deed may be void—*Garrod v. Sanders*, 6 T. R. 403.

The Power is confined to Cases where an Action is brought. It does not apply to Defects by reason whereof the Annuity is void under the first Section—*Symonds and Ux v. Cobourne*, 1 B. and P. 482.

Whether the Court will for such Defect stay Proceedings or put the Defendant to plead the Circumstances—*Qu. ibid.*

The Courts under their general Jurisdiction will take Cognizance of a Warrant of Attorney to confess Judgment for an Annuity void under the Act, and direct it to be cancelled, *ex parte Chester*, 4 T. R. 694, and see note 1 B. and P. 66; but will not set aside the other Deeds, *ex parte Chester ibid.*

But the Levying a Fine does not give Jurisdiction to the Court of Common Pleas—*Crawford v. Caines*, 2 H. B. 438.

The Clause only relates to such Judgments on Warrants of Attorney as were intended to be Part of the Security, and does not extend to Cases where Judgment is obtained in the ordinary Course of Law on any Instrument given for securing the same—*Buck v. Tyte*, 7 T. R. 495.

Therefore after Verdict and Judgment on *non est factum* the Application for summary Relief is too late—*ibid.*

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such Judgment already entered, on any Deed, Bond, Instrument, or other Assurance, already executed for the Purposes aforesaid, a like Memorial of the Deed, Bond, Instrument, or other Assurance, shall be inrolled in the High Court of Chancery; and in case the

After Judgment upon Warrant of Attorney, Elegit and Verdict in Ejectment on Application is too late, the Defendant should have made his stand upon the Ejectment.—*Witley v. Woolley*, 7 T. R. 540.

A Rule for setting aside the Annuity having been discharged on the Merits a new Application will not be entertained upon the same Statement of Facts, although upon a different Objection—*Greathead v. Bromley*, 7 T. R. 455.

Nor upon another Fact not proved on the former Application—*Schumann v. Weatherhead*, 1 East 537.

Annuity not set aside for a clerical Error in the Term assigned—*Ince v. Everard*, 6 T. R. 545. So where the true Consideration was stated to be 280*l.* and afterwards by mistake which Sum of 250*l.* was paid, &c.—*ibid.*

The Court will not after the Death of the Grantee set aside an Annuity upon a Statement of Facts which he might have contradicted if living—*Haynes v. Hare*, 1 H. B. 659; and see *ex parte Maxwell*, 2 East. 85. So after the Death or Imbecility of the Agent who negotiated the Transaction, and could alone speak to the Facts, the Annuity being paid during his Life—*Pool v. Cabanes*, 5 T. R. 328.

Secus where the Defects appeared on the Face of the Instruments, as where only some of the Deeds were attested by the Witnesses mentioned in the Memorial—*ex parte Mac Reth*, 2 East. 363.

So upon a Warrant of Attorney when all the Deeds are not stated in the Memorial—*Van Braam v. Isaacs*, 1 B. and P. 451.

And there is no Limitation of Time for the Application, and the Court have no Discretion—*Van Braam v. Isaacs*, *ex parte Mac Reth*.

The Objections to the Annuity must be stated in the Rule nisi.—*Reg. Gen. B. R. T.* 42 G. III. 2 East. 569.

2. In Equity.

A Court of Equity will entertain Jurisdiction to set aside an Annuity for legal Objections founded on the Act—*Byne v. Vivian*, 5 Vesey 604—*Byne v. Potter*, 5 Vesey, 609, before the Lord Chancellor—*Bromley v. Holland*, 5 Vesey, 610—7 Vesey, 3—*Coop. 8*. In this last Case the Principle of Jurisdiction was much doubted, and the Decision referred to the Authority of preceding Cases—*Underhill v. Horwood*, 10 Vesey, 209—*Ware v. Horwood*, S. C. by Revivor, 14 Ves. 28. In that Case the Lord Chancellor thought the Principle correct.

The Jurisdiction was exercised in *Bromley v. Holland* after two unsuccessful Applications to the summary Jurisdiction of a Court of Law.

The Application was on a different Ground, and the Master of the Rolls said, "The Plaintiff shall not now avail himself of any Objection that was the Ground of the Application to the King's Bench"—(Sed. Qu.)

He also expressed an Opinion, which is evidently correct, that the Refusal of a summary Application to set aside the Annuity would not be any Objection to the same Ground being taken again whenever it was endeavoured to enforce it.

VII. The Consequences of Invalidating an Annuity.

The Terms of setting aside an Annuity in Equity are the taking an Account of the Consideration paid for the Purchase with Interest at five per Cent., deducting the Payments from time to time made, which are to be applied in the first Place in discharge of the Interest and then of the Principal, and in case any Thing upon taking such Account is due from the Grantor he is, to pay it to the Grantee or his Assignee—*Bromley v. Holland*, 7 Ves. 29.

And this is the Course adopted in setting aside Annuities upon summary Applications to Courts of Law.

Premiums of Insurance on the Life not allowed—*ex parte Shay*, 5 Vesey, 580.

Allowed under special Circumstances, the Bill offering to pay any fair and reasonable Demands, and the Insurance having been proposed by the Grantor in a Letter as a reasonable Term—*Hoffman v. Cooke*, 5 Ves. 623.

Party shall neglect to enrol the same, any such Judgment, Execution, or Proceeding in the Action respectively, shall be null and void. No. 1.

III. And be it further enacted by the Authority aforesaid, That in every Deed, Instrument, or other Assurance, whereby any Annuity shall contain the Consideration and Names at length. 17 Geo. III. c. 26.

If the Balance of Account is against the Grantor it cannot be recovered—*Bromley v. Holland, 2 Ves. 29.*

An Annuity being vacated for Non-conformity with the Act, the purchase Money may be recovered back in an Action for Money had and received—*Shove v. Webb, 1 T. R. 732.*

Qu. As to this Form of Action when Part of the Consideration is an antecedent Debt for Goods sold—*ibid.*

A mere Surety for the Annuity is not liable to this Action, although he has signed a Receipt for the Money—*Straton v. Rastall, 2 T. R. 366.*

The Action may be maintained if the Grantor has procured the Warrant of Attorney to be set aside on Motion, though the other Securities remain, *Scurfield v. Gowland, 6 East. 241*; or if even the Grantor has dissented from the Annuity and refused to pay it on the Ground of its Invalidity—*Waters v. Mansell, 5 Taunt. 56.*

The Payments may be set-off—*Hicks v. Hicks, 3 East. 16*; although made above six Years before, the Statute of Limitations not being replied—*ibid.*

Qu. If it is replied.

Qu. As to allowing a Computation of Interest, Interest not being usually allowed in Actions for Money had and received.

Lord Eldon in *Jones v. Harris, 9 Ves. 492*, says, that the general Opinion at the Time when the Act was passed was, that if a proper Memorial was not registered the Grantee should neither have his Annuity or the Money back, the Act meaning to put an End to such Transactions. That would have been a much wiser Course than that which has prevailed in later Cases, for it is a Mockery to say that a Man shall be relieved upon such Terms. In general Persons who are under the Necessity of raising Money in this Way would not dare to take the Objection under the Act, when the Consequence would be an immediate Execution.

The Effect therefore of these Decisions that the Consideration may be recovered back with Interest is instead of the Protection intended by the Act to increase the Evil. He proceeds to add, that the Contrary is settled by Authority.

Previous to these Observations being promulgated from the Bench, the Liability to refund had been the Subject of opposite Opinions in Mr. Powell's Essay on the Law of Contracts, and Mr. Plowden's Treatise on Annuities.—The Opinions of the former Gentleman being in Favour of the Right of Repetition, and the latter in Opposition to it. The present Editor, in endeavouring to illustrate the general Nature of a Right of Repetition, in an Essay submitted to the Public, on the Action for Money had and received, took the Opportunity of expressing his own Ideas upon the Subject, and, in Conformity with those Principles of Jurisprudence which he has often endeavoured, however unsuccessfully, to promote, took occasion to observe, in Answer to the Arguments of Mr. Plowden, that "a great Part of his Reasoning will be answered, by admitting, that a Man who has neglected to take the Measures prescribed by Law for securing his Annuity, or to speak more correctly, who has fallen into some Mistake in endeavouring to comply with the Requisites of the Law, shall not be allowed, in the first Instance, to adduce his own Neglect or Mistake as a Ground of Prejudice against the opposite Party; he shall not alledge, that in Consequence of a Blunder in the Registry he will no longer receive his Annuity, but reclaim his Principal, any more than a Person who has made a fraudulent Insurance, shall come in the first Instance, and shewing, that by his own Fraud the Policy was void, insist upon the Premium being retained; but when the other Party has taken Advantage of the Invalidity of the Contract, has found out some formal technical Objection, and refused, in Consequence, to adhere to his Engagement, can it be contended that he has any Right, in Point of natural Justice, to retain the Money that he received for a Purpose which he refuses to execute? By the Protection of the Law he shall not be placed in a Situation which he considers less advantageous, than if his Engagements had not been made; but shall he be therefore enabled to put himself in a better

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or Rent-charge shall, from and after the passing of this Act, be granted or attempted to be granted, the Consideration really and *bona fide* (which shall be in Money only), and also the Name or Names of the Person or Persons by whom, and on whose Behalf, the said Consideration, or any Part thereof, shall be advanced, shall be fully and truly set forth and described in Words at Length; and in case the same shall not be fully and truly set forth and described, every such Deed, Instrument, or other Assurance, shall be null and void to all Intents and Purposes.

If Part of Consideration be returned, or any Notes shall be paid when due, &c.

IV. And be it further enacted, That if any Part of the Consideration shall be returned to the Person advancing the same; or, in case the Consideration, or any Part of it, is paid in Notes, if any of the Notes, with the Privity and Consent of the Person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if the Consideration, or any Part of it, is paid in Goods; or if any Part of the Consideration is retained on Pretence of answering the future Payments of the Annuity, or any other Pretence; in all and every of the aforesaid Cases, it shall and may be lawful for the Person, by whom the Annuity or Rent-charge is made payable, to apply to the Court, in which any Action is brought for Payment of the Annuity on Judgement entered, by Motion, to stay Proceedings on the Judgement or Action; and if it shall appear to the Court that such Practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the Deed, Bond, Instrument, or other Assurance, to be cancelled, and the Judgment, if any has been entered, to be vacated.

the Court may order Deed to be cancelled, &c.

Directions relating to enrolment of Memorials.

V. And be it further enacted, That a particular Roll shall be

Situation, than if there had been no Engagement at all, by the Amount of the Money which he wishes to retain? He shall not be injured; but shall he, therefore, be allowed to defraud? And as to any supposed Agreement of not reclaiming the Principle is an essential Part of the Supposition, that the Annuity will be duly paid; it is blowing hot and cold to adopt one Part of the Supposition and reject the other. If the Grantee of the Annuity does not properly provide for its Security, let the Grantor avail himself of positive Law and avoid it; but let him not, at the same Time, retain the Purchase-money and withhold the Security; more especially, let not the Conduct of the Man, who requires to be paid either the one or the other, who only *certat de damno vitando* against the other, *qui certat de lucro captando* be the Object of Reproach." Reviewing these Observations, after an Interval of thirteen Years, he is happy in retaining his Preference to the Principles which have been established by the Authority of judicial Decisions, over the incidental Observations by which they have been assailed; feeling that if the Object of the Legislature was to abolish the Contract under Consideration, it would have been more consistent to have given that Intention its full and proper Effect, by at once attaching Illegality to the Substance of the Contract, and precluding the Repetition of Money paid as the Consideration of it, than under the Pretence of Regulation and Publicity to have entangled it in a Set of obscure and unintelligible Formalities, deluding the one Party by subjecting him to the Loss of the Advantage for which he had stipulated, and of the Money which he had advanced, and supporting the other in his iniquitous Retention of the Price of an Engagement which he had not the Honesty to perform.

VIII. Of Assignments of Annuities.

In the Case of the Duke of Bolton v. Williams, 2 Ves. jun. 138, (among many other Points,) it was held by Lord Loughborough, that an Assignment of an Annuity is required to be registered as well as an original Grant, but this as a general Question was not necessary to be decided, as the Transaction related to the Grant of an original Annuity including the Transfer of former Annuities, and invalid on other Grounds; and in Dixon v. Birch, 3 Hen. Bl. 307—Bromley v. Greathead, Hunt on Annuities, 138—it was ruled and is now settled, that an Assignment of an Annuity is not within the Act.

provided and kept by the Clerks of the Inrollments in Chancery, or their Deputy, on which such Memorials shall be entered, and that every such Memorial shall be duly inrolled in order of Time, as the same shall be brought to the Office; and the said Clerks of the Inrollments, or their Deputy, shall specify upon the Roll the certain Day, Hour, and Time, on which such Memorial is brought to the Office, and shall grant a Certificate of the Inrollment thereof when required; and that there shall be paid for the Inrollment of every such Memorial the Sum of one Shilling, and no more, in case the same do not exceed two hundred Words; but if such Memorial shall exceed two hundred Words, then after the Rate and Proportion of Sixpence for every one hundred Words, and the like Fees for every Certificate and Copy given; and the Fee of one Shilling for every Search in the Office, and no more.

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Clerks Fees.

VI. And be it further enacted by the Authority aforesaid, That all Contracts for the Purchase of any Annuity with any Person being under the Age of twenty-one Years, shall be and remain utterly void, any Attempt to confirm the same, after such Person shall have attained the Age of twenty-one Years, notwithstanding: And that if any Person shall, either in Person, by Letter, Agent, or otherwise howsoever, procure, engage, solicit, or ask any Person, being under the Age of twenty-one Years, to grant or attempt to grant any Annuity or Rent-charge, or to execute any Bond, Deed, or other Instrument, for securing the same; or shall advance or procure, or treat for any Money to be advanced to any Person under the Age of twenty-one Years, upon Consideration of any Annuity or Rent-charge to be secured or granted by such Infant, after he or she shall have attained his or her Age of twenty-one Years; or shall induce, solicit, or procure any Infant, upon any Treaty or Transaction for Money advanced, or to be advanced, to make Oath, or to give his or her Word of Honour, or solemn Promise, that he or she will not plead Infancy, or make any other Defence against the Demand of any such Annuity or Rent-charge, or the Repayment of the Money advanced to him or her when under Age; or that when he or she comes of Age, he or she will confirm or ratify, or in any way substantiate such Annuity or Rent-charge; every such Person shall be guilty of a Misdemeanor, and being thereof lawfully convicted in any Court of Assize, Oyer and Terminer, or General Gaol Delivery, shall and may be punished for the said Offence by Fine, Imprisonment, or other Corporal Punishment, as the Court shall think fit to award.

All Contracts for Purchase of Annuities with Person under 21, void.

Any Person shall be liable to grant annuity, &c.

shall be punished, &c.

VII. And be it enacted by the Authority aforesaid, That all and every Solicitors and Solicitor, Scriveners and Scrivener, Brokers and Broker, and other Persons or Person, who, from and after the passing of this Act, shall ask, demand, accept, or receive, directly or indirectly, any Sum or Sums of Money, or any other Kind of Gratuity or Reward, for the soliciting or procuring the Loan, and for the Brokerage of any Money that shall be actually and *bona fide* advanced and paid as and for the Price or Consideration of any such Annuity or Rent-charge, over and above the Sum of ten Shillings for every one hundred Pounds so actually and *bona fide* advanced and paid, shall be deemed and adjudged guilty of a Misdemeanor; and being lawfully convicted of such Offence in any Court of Assize, Oyer and Terminer, or General Gaol Delivery, shall and may, for every such Offence, be punished by Fine and Imprisonment, or one of them, at the Discretion of the Court; and that the Person or Persons who shall have paid or given any Sum or Sums of Money, Gratuity or Reward, shall be deemed a competent Witness or Witnesses to prove the same.

Solicitors, &c. who take more than 10s for 100l. for procuring Money for Annuities, punished, &c.

VIII. And be it further enacted, That nothing in this Act contained shall extend to any Annuity or Rent-charge given by Will or

Cases to which Act not extend.

No. 1. by Marriage Settlement, or for the Advancement of a Child; nor to
 17 Geo. III, c. 26. any Annuity or Rent-charge secured upon Lands of equal or greater
 annual Value, whereof the Grantor was seized in Fee-simple or in Fee-
 tail in Possession at the Time of the Grant, or secured by the actual
 Transfer of Stock in any of the Public Funds, the Dividends whereof
 are of equal or greater annual Value than the said Annuity; nor to any
 voluntary Annuity granted without regard to pecuniary Consideration;
 nor to any Annuity or Rent-charge granted by any Body Corporate, or
 under any Authority or Trust created by Act of Parliament; nor to
 any Annuity where the Sum to be paid does not exceed ten Pounds
 annually, unless there be more than one such last-mentioned Annuity
 from the same Grantor or Grantors, to or in Trust for the same Person
 or Persons.

No. 2.

53 George III. c. 141.—An Act to repeal an Act of the
 Seventeenth Year of the Reign of his present Majesty,
 intituled, *An Act for registering the Grants of Life
 Annuities; and for the better Protection of Infants
 against such Grants;* and to substitute other Provisions
 in lieu thereof. [14th July, 1813.]

53 G. III. c. 141. **W**HEREAS it is expedient that an Act, passed in the Seven-
 17 Geo. III. c. 26. teenth Year of his present Majesty, intituled *An Act for
 registering the Grants of Life Annuities; and for the better Pro-
 tection of Infants against such Grants,* should be repealed, and other
 Provisions substituted in lieu thereof: May it therefore please your
 Majesty that it may be enacted; and be it enacted by the Kings most
 Excellent Majesty, by and with the Advice and Consent of the Lords
 Spiritual and Temporal, and Commons, in this present Parliament
 assembled, and by the Authority of the same, That the said recited
 Act shall be and the same is hereby repealed, save and except so far
 as regards any Annuities or Rent Charges, which have been granted
 before the passing of this Act.

II. And be it further enacted, That within Thirty Days after the
 Execution of every Deed, Bond, Instrument or other Assurance,
 whereby an Annuity or Rent Charge shall, from and after the passing
 of this Act, be granted, for one or more Life or Lives, or for any
 Term of Years or greater Estate determinable on one or more Life or
 Lives, a Memorial of the Date of every such Deed, Bond, Instrument
 or other Assurance, of the Names of all the Parties and of all the
 Witnesses thereto, and of the Person or Persons for whose Life or
 Lives such Annuity or Rent Charge shall be granted, and of the Per-
 son or Persons by whom the same is to be beneficially received, the
 pecuniary Consideration or Considerations for granting the same, and
 the annual Sum or Sums to be paid, shall be enrolled in the High
 Court of Chancery, in the Form or to the Effect following, with such
 Alterations therein as the Nature and Circumstances of any particular
 Case may reasonably require:

Annuities, &c.
 enrolled in Chan-
 cery.

No. 2.
53 G. III. c. 111.

Date of Instrument.	Nature of Instrument.	Names of Parties.	Names of Witnesses.	Name or Names of Person or Persons by whom Annuity or Rent Charge to be beneficially received.	Person or Persons for whose Life or Lives the Annuity or Rent Charge is granted.	Consideration and how paid.	Amount of Annuity or Rent Charge.
10 Aug. 1813.	Indentures of Lease and Release.	A. B. of one Part. C. D. of the other Part.	E. F. of G. H. of	C. D.	A. B.	£100 paid in Money, £500 paid in Notes of the Governor and Company of the Bank of England, or other Notes or Bills of Exchange as the case may be.	£100 a Year.
Same Date.	Bond in Penalty of £1,200.	A. B. to C. D.	E. F. G. H.	For securing the same Annuity or Rent Charge.			
Same Date.	Warrant of Attorney to confess Judgment on the same Bond.	A. B. to I. K. and L. M. Attorneys of Court of King's Bench.	E. F. G. H.				

otherwise every such Deed, Bond, Instrument or other Assurance, shall be null and void, to all Intents and Purposes.

III. Provided always, and be it further enacted, That if any such Annuity shall be granted by, or to or for the Benefit of any Company exceeding in Number Ten Persons, which Company shall be formed for the Purpose of granting or purchasing Annuities, it shall be suffi-

Companies described by their usual Form.

No. 2. 53 G. III. c. 141. cipient in any such Memorial to describe such Company by the usual Firm or Name of Trade.

Names of Parties
Beneficially inter-
ested, stated.

IV. And be it further enacted, That in every Deed, Bond, Instrument or other Assurance, whereby any Annuity or Rent Charge shall, from and after the passing of this Act, be granted or attempted to be granted, for one or more Life or Lives, or for any Term of Years or greater Estate determinable on one or more Life or Lives, where the Person or Persons to whom such Annuity shall be granted or secured to be paid, shall not be entitled thereto beneficially, the Name or Names of the Person or Persons who is or are intended to take the Annuity beneficially shall be described in such or the like Manner as is hereinbefore required in the Enrolment; otherwise every such Deed, Instrument or other Assurance, shall be null and void.

Copies of Deed
or Instruments se-
curing Annuities
may be obtained.

V. And be it further enacted, That in case any Person or Persons, by whom any Annuity or Rent Charge, of which such Particulars as aforesaid are hereby required to be enrolled, shall for the Time being be payable, shall be desirous of obtaining a Copy of every or any Deed, Bond, Instrument or other Assurance, whereby such Annuity or Rent Charge was granted, and of such his, her or their Desire, shall give Twenty-one Days Notice in Writing to the Person or Persons for the Time being entitled to such Annuity or Rent Charge, such Person or Persons shall, on or before the Expiration of such Twenty-one Days, unless prevented by Fire or other inevitable Accident, and in that Case if the Assurances shall not be destroyed by such Accident, then as soon after as such Impediment shall be removed, send or deliver to the Person or Persons requiring the same, a Copy of every Deed, Bond, Instrument or other Assurance, whereby such Annuity or Rent Charge was granted, or of such of the Assurances as in such Notice shall be required; and such last mentioned Person or Persons shall, at the Time of receiving the same, pay to the Person or Persons furnishing the same, a Sum after the Rate of Six-pence for every One Hundred Words contained in every such Copy, and also the reasonable Costs of sending or delivering the same; and the Person or Persons holding the original Instruments by which such Annuity or Rent Charge shall be secured shall suffer the Person or Persons, to whom such Copies shall be delivered or sent, to examine the same with the Originals; and in case such Copies shall not be sent or delivered, or the Person or Persons holding the original Instruments shall refuse to suffer such Copies to be examined therewith according to the Direction in this Act, it shall be lawful for the Person or Persons by whom the Annuity or Rent Charge is payable to take out a Summons from any of his Majesty's Justices of His Courts of King's Bench and Common Pleas, requiring the Person or Persons neglecting to send or deliver such Copies, or refusing to suffer the same to be examined with the original Instrument as aforesaid, to appear before such Judge and shew Cause in the Premises; and it shall and may be lawful for the Judge before whom such Person or Persons shall be summoned to make such Order for the Production of the Instruments by which such Annuity or Rent Charge shall be secured, and for suffering the Complainant to take Copies thereof, and examine the same, or the Copies delivered with the original Instruments, and otherwise in the Premises, as to such Judge shall seem meet.

Fee.

Pro-
ceedings against
Grantor of Annu-
ity stayed.

VI. And be it further enacted, That if any Part of the Consideration for the Purchase of any such Annuity or Rent Charge shall be returned to the Person advancing the same, or in case such Consideration, or any Part of it shall be paid in Notes, if any of the Notes, with the Privy and Consent of the Person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if such Consideration is expressed to be paid in Money,

but the same or any Part of it shall be paid in Goods; or if the Consideration or any Part of it shall be retained, on Pretence of answering the future Payments of the Annuity or Rent Charge, or any other Pretence; in all and every the aforesaid Cases, it shall be lawful for the Person by whom the Annuity or Rent Charge is made payable, or whose Property is liable to be charged or affected thereby, to apply to the Court in which any Action shall be brought for Payment of the Annuity or Rent Charge, or Judgment entered by Motion, to stay Proceedings on the Action or Judgment, and if it shall appear to the Court that such Practises as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order every Deed, Bond, Instrument or other Assurance, whereby the Annuity or Rent Charge is secured, to be cancelled, and the Judgment, if any has been entered, to be vacated.

VII. And be it further enacted, That a particular Book shall be provided and kept by the Clerks of the Enrolments in Chancery; or their Deputy, in which such Particulars as hereinbefore are mentioned shall be entered alphabetically, by the Names of the Grantors, in order of Time as the same shall be brought to the Office; and the said Clerks of the Enrolments, or their Deputy, shall specify in the Book, the certain Day, Hour and Time on which such Particulars are brought to the Office, and shall grant a Certificate of the Entry thereof, when required; and that there shall be paid for every such Entry Twenty Shillings only, and the Fee of One Shilling for every Certificate and Copy given, and the Fee of One Shilling for every Search in the Office, and no more.

Book kept by Clerks of Enrolments of Chancery.

Fee.

VIII. And be it further enacted, That all Contracts for the Purchase of any Annuity or Rent Charge with any Person, being under the Age of Twenty-one Years, shall be and remain utterly void; any Attempt to confirm the same after such Person shall have attained the Age of Twenty-one Years notwithstanding: And that if any Person shall, either in Person, by Letter, Agent or otherwise howsoever, procure, engage, solicit or ask any Person, being under the Age of Twenty-one Years, to grant or attempt to grant any Annuity or Rent Charge, or to execute any Bond, Deed or other Instrument for securing the same, or shall advance or procure or treat for any Money to be advanced for any Person under the Age of Twenty-one Years, upon Consideration of any Annuity or Rent Charge to be secured or granted by such Infant after he or she shall have attained his or her Age of Twenty-one Years, or shall induce, solicit or procure any Infant, upon any Treaty or Transaction for Money advanced or to be advanced, to make Oath or to give his or her Word of Honour or solemn Promise, that he or she will not plead Infancy, or make any other Defence against the Demand of any such Annuity or Rent Charge, or the Repayment of the Money advanced to him or her when under Age, or that when he or she comes of Age, he or she will confirm or ratify, or in any way substantiate such Annuity or Rent Charge, every such Person shall be guilty of a Misdemeanor; and being thereof lawfully convicted in any Court of Assize, Oyer and Terminer, or General Gaol Delivery, shall and may be punished for the said Offence by Fine, Imprisonment or other Corporal Punishment, as the Court shall think fit to award.

Contracts for Purchase of Annuities, by Persons under Age, void. Endeavouring to induce Infants to grant Annuities.

Misdemeanor.

IX. And be it further enacted, That all and every Solicitors and Solicitor, Scriveners and Scrivener, Brokers and Broker, and other Persons or Person, who, from and after the passing of this Act, shall ask, demand, accept or receive, directly or indirectly, any Sum or Sums of Money, or any other Kind of Gratuity or Reward, for the soliciting or procuring the Loan, and for the Brokerage of any Money that shall be actually and bona fide advanced and paid as and for the

Acting as Solicitors, or as such

No. 2. Price or Consideration of any such Annuity or Rent Charge, over and
 53 G. III. c. 141. above the Sum of Ten Shillings for every One Hundred Pounds so
 actually and *bona fide* advanced and paid, shall be deemed and ad-
 judged guilty of a Misdemeanor, and being lawfully convicted of such
 Offence in any Court of Assize, *Oyer and Terminer*, or General Gaol
 Delivery, shall and may for every such Offence be punished by Fine
 and Imprisonment, or one of them, at the Discretion of the Court ;
 and that the Person or Persons who shall have paid or given any Sum
 or Sums or Money, Gratuity or Reward, shall be deemed a competent
 Witnesses.

Proviso for Scot-
 land or Ireland,
 and Annuities
 granted by Will,
 &c.
 X. And be it further enacted, That this Act shall not extend to
Scotland or Ireland, nor to any Annuity or Rent Charge given by
 Will or by Marriage Settlement, or for the Advancement of a Child,
 nor to any Annuity or Rent Charge secured upon Freehold or Copy-
 hold or Customary Lands, in *Great Britain or Ireland*, or in any of
 His Majesty's Possessions beyond the Seas, of equal or greater Annual
 Value than the said Annuity, over and above any other Annuity, and
 the Interest of any Principal Sum charged or secured thereon, of which
 the Grantee had Notice at the Time of the Grant, whereof the
 Grantor is seised in Fee Simple or Fee Tail in Possession, or the Fee
 Simple whereof in Possession the Grantor is enabled to charge at the
 Time of the Grant, or secured by the actual Transfer of Stock in any
 of the Public Funds, the Dividends whereof are of equal or greater
 Annual Value than the said Annuity ; nor to any voluntary Annuity
 or Rent Charge granted without regard to pecuniary Consideration or
 Money's Worth ; nor to any Annuity or Rent Charge granted by any
 Body Corporate, or under any Authority or Trust created by Act of
 Parliament.

PART III. CLASS VII.

GAMING.*

No. 1.

33 Henry VIII. c. 9.—The Bill for the maintaining Artillery, and the debarring of unlawful Games.

[Inserted Part VI. Class XX. No. 1.]

No. 2.

16 Charles II. c. 7.—An Act against deceitful, disorderly, and excessive Gaming.

‘WHEREAS all lawful Games and Exercises should not be otherwise used, than as innocent and moderate Recreations, and not as constant Trades or Callings to gain a Living, or make unlawful Advantage thereby; and whereas by the immoderate Use of them, many Mischiefs and Inconveniencies do arise, and are daily found, to the maintaining and encouraging of sundry idle, loose, and disorderly Persons in their dishonest, lewd, and dissolute Course of Life, and to the circumventing, deceiving, cousening, and debauching of many of the younger Sort, both of the Nobility and Gentry, and others, to the Loss of their precious Time, and the utter Ruin of their Estates and Fortunes, and withdrawing them from noble and laudable Employments and Exercises:’

16 Car. II. c. 7.

II. Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons of any Degree or Quality whatsoever, at any Time or Times after the Nine and Twentieth Day of *September*, which shall be in the Year of our Lord God One Thousand Six Hundred Sixty and Four, do or shall, by any Fraud, Shift, Cousenage, Circumvention, Deceit, or unlawful Device, or ill Practice whatsoever, in playing at or with Cards, Dice, Tables, Tennis, Bowles, Kittles, Shovel-board; or in or by Cock-fightings, Horse-races, Dog-matches, Foot-races, or other Pastimes, Game or Games whatsoever, or in or by bearing a Share or Part in the

Deceits and Cousenages in Gaming.

* Those Statutes which relate to Gaming principally, as a Matter of penal Law, are inserted in Part VI. Class 20; but the Titles are noted in this Class, as they occur in chronological Order.

No. 2.
16 Car. II. c. 7.

How to be sued
for and recovered

Stakes, Wagers, or Adventures, or in or by betting on the Sides or Hands of such as do or shall play, act, ride, or run as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any Sum or Sums of Money, or other valuable Thing or Things whatsoever: that then every Person and Persons so offending as aforesaid, shall *ipso facto* forfeit and lose treble the Sum or Value of Money, or other Thing or Things so won, gained, obtained, or acquired; the One Moiety thereof to our Sovereign Lord the King, his Heirs and Successors, and the other Moiety thereof unto the Person or Persons grieved, or who shall lose the Money, or other Thing or Things so gained; so as every such Loser and Person grieved, in that Behalf, do or shall prosecute and sue for the same within Six Calendar Months next after such Play: And in default of such Prosecution, the same other Moiety to such Person or Persons as shall or will prosecute or sue for the same within One Year next after the said Six Months expired: And that the said Forfeitures shall, or may be sued for, or recovered by Action of Debt, Bill, Complaint, or Information, in any of his Majesty's Courts at *Westminster*, wherein no Essoin, Protection, or Wager of Law, shall be allowed: And that all and every such Plaintiff or Plaintiffs, Informer or Informers, shall in every such Suit and Prosecution have and recover his and their treble Costs against the Person offending and forfeiting as aforesaid; any Law, Statute, Custom, or Usage to the contrary in any wise notwithstanding.

Prevention of ex-
cessive and immoderate Gaming.

1 Vent. 253.
1 Lutw. 180.
2 Mod. 54.
1 Salk 344.
2 Lev. 94.
4 Mod. 409.

III. And for the better avoiding and preventing of all excessive and immoderate playing and gaming for the Time to come, be it further ordained and enacted by the Authority aforesaid, That if any Person or Persons shall at any Time or Times after the Nine and Twentieth Day of *September* aforesaid, play at any of the said Games, or any other Pastime, Game or Games whatsoever (other than with and for ready Money), or shall bet on the Sides or Hands of such as do or shall play thereat, (1) and shall lose any Sum or Sums of Money, or other Thing or Things so played for, exceeding the Sum of One

(1) In *Pope v. St. Leger*, 1 Salk. 344—4 Mod. 409—5 Mod. 4—1 Lutw. 481, it was ruled, that the Statute did not extend to a Bet, as to the proper Manner of playing at Backgammon—being not on the Right of the Play, but on the Chance of the Play, which is collateral. But in *Brown v. Lunn*, 2 H. B. 43, Lord Loughborough refused to try a Cause upon a Wager, as to the Chance of the Dice at Hazard—and ordered it to be struck out of the Paper, as being of a Nature highly improper to be made the foundation of an Action—with a Proviso, that it should be restored in case the Court should be of a different Opinion, and the Court refused an Application for the Cause to be restored. Gould, J. said, “The Game of Hazard stands condemned by the Law of England; there are many Statutes which make it illegal, and Nothing can be more injurious to the Morals of the Nation, than a public Discussion of this Nature, before an Audience whose Curiosity is excited to attend the Time of such Questions. The Refusal, therefore, to try it, was both laudable and legal.” Heath, J. “All Games at Dice, except Backgammon, are prohibited by Law, and I think it would be vilifying and degrading Courts of Justice, if they were to allow, by Means of a Wager, a Discussion on prohibited Games.” The Counsel for the Defendant had urged, with respect to the Case of *Pope v. St. Leger*, that the Bet was concerning a legal Game, Backgammon being excepted out of the Statutes, which prohibited other Games at Dice. The Reporter properly notices, that that could not be the Ground of the Decision, as the Exemption in Favour of Backgammon was first made by Statute 15 Geo. II. c. 19, sec. 9, (and which is only an Exception from the particular Provisions of that Statute.) The summary Decision in *Brown v. Lunn* can hardly be sufficient to constitute a direct Authority upon the mere Question of Law, with respect to the proper Method of playing at any Game or Chance, (supposing the Question to be raised in a direct and regular Manner,) in Opposition to the express Authority of *Pope v. St. Leger*,

Hundred Pounds (2) at any One Time or Meeting, upon Ticket or Credit, or otherwise, and shall not pay down the same at the Time when he or they shall so lose the same, the Party and Parties who loseth or shall lose the said Monies, or other Thing or Things so played or to be played for, above the said Sum of One Hundred Pounds, shall not in that Case be bound or compelled or compellable to pay or make good the same; but the Contract and Contracts for the same, and for every Part thereof, and all and singular Judgments, Statutes, Recognizances, Mortgages, Conveyances, Assurances, Bonds, Bills, Specialties, Promises, Covenants, Agreements, and other Acts, Deeds, and Securities whatsoever, which shall be obtained, made, given, acknowledged, or entered into for Security or Satisfaction of or for the same, or any Part thereof, shall be utterly void and of none Effect: (3) And that the said Person or Persons, so winning the said Monies, or other Things, shall forfeit and lose treble the Value of all such Sum and Sums of Money, or other Thing or Things, which he shall so win, gain, obtain; or acquire, above the said Sum of One Hundred Pounds; the One Moiety thereof to our said Sovereign Lord the King, his Heirs and Successors; and the other Moiety thereof to such Person or Persons as shall prosecute or sue for the same within One Year next after the Time of such Offence committed; and to be sued for by Action of Debt, Bill, Complaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, wherein no Essoin, Protection, or Wager of Law, shall be allowed: And that every such Plaintiff or Plaintiffs, Informer or Informers, shall, in every such Suit and Prosecution, have and receive his Treble Costs against the Person and Persons offending and forfeiting as aforesaid; any Law, Custom, or Usage to the contrary notwithstanding.

No. 2.
16 Car. II. c. 7.

The Penalty.

(2) There are several Cases as to the Application of this Clause, where different Sums exceeding in the whole £100, were lost to different Persons at the same Time, or to the same Person at different Times, and with respect to Contracts being distinct, for which see *Noel v. Reynolds*, 2 Show. 185—*Danvers v. Thistleworth*, cited 1 Salk. 345—*Dickson v. Pawlet*, 1 Salk. 345—*Edgebury v. Rosendale*, 2 Lev. 94—S. C. by the Name of *Hedgeborrow v. Rosenden*, 1 Vent. 253—*Stanhope v. Smith*, 5 Mod. 352—*Hudson v. Mulliner*, 3 Keb. 672, (and which Cases are collected in *Viner's Abridgement*, Title GAMING.) The Cases are immaterial with respect to their direct Application, since the Statute 9 Anne, c. 14, *post*; but query whether they may not be applied as referable to Contracts of Gaming above or below £10, and see Notes to that Statute.

(3) See Notes to Statute 9 Anne, *post*.

No. 3.

10 & 11 William III. c. 17.—An Act for suppressing of Lotteries.

[Inserted Part VI. Class XX. No. 3]

No. 4.

9 Anne, c. 6.—An Act for reviving, continuing, and appropriating certain Duties upon several Commodities to be exported; and certain Duties upon Coals to be water-born and carried Coastwise, and for granting further Duties upon Candles, for thirty-two Years; to

raise fifteen hundred thousand Pounds, by Way of a Lottery, for the Service of the Year one thousand seven hundred and eleven; and for suppressing such unlawful Lotteries, and such Insurance Offices, as are therein mentioned.

[Inserted Part VI. Class XX. No. 4.]

No. 5.

9 Anne, c. 14.—An Act for the better preventing of excessive and deceitful Gaming.

9 Anne, c. 14.

Mortgages, &c. where the Consideration is for Money won by Gaming, or for Repayment of Money lent at Gaming, &c. shall be void

‘WHEREAS the Laws now in Force for preventing the Mischiefs which may happen by Gaming, have not been found sufficient for that Purpose;’ Therefore for the further preventing of all excessive and deceitful Gaming, be it enacted by the Queen’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That from and after the first Day of May, One Thousand Seven Hundred and Eleven, all Notes, Bills, (1) Bonds, (2) Judgments, (3) Mortgages or other Securities, (4) or Conveyances whatsoever, given, granted, drawn or entered

(1) In *Hussey v. Jacob*, 1 Salk. 341, it was said, that if a Bill accepted for Money lost at Play had been assigned to a Stranger *bona fide* upon good Consideration, he had not been within the Statute (16 Charles II.) for he was not privy to the Act, but an honest Creditor. But in *Bowyer v. Bampton*, 2 Str. 1155, it was ruled, that the Statute of Anne extends to tender void Bills and Notes in the Hands of an innocent Indorsee, and such is now the established Law. The same was ruled with respect to Bills void for Usury in *Lowe v. Walker*, Doug. 705—see the other Cases connected with that Doctrine, and which apply equally to the Case of Gaming in the general Note on the Law of Usury—*ante* Class V. No. 1.

(2) In an anonymous Case, 2 Mod. 279, 29 Chas. II. it is stated, that A. wins 100*l.* of B. at Play, and A. owing C. 100*l.* brings C. to B. who owned the Debt, and B. gives C. a Bond for the 100*l.* C. not being privy to the Matter accepted the Bond, and afterwards C. put it in Suit. The Obligor pleaded the Statute 16 Chas. II.; but the Plaintiff, disclosing the whole Matter, the Court were of Opinion upon Demurer that it was not a Case within the Statute, and gave Judgment for the Plaintiff. The Case is referred to by Holt, C. J. in *Hussey v. Jacob*, 1 Salk. 344; but Qu. if this Case would now be allowed as Law.

(3) A young Man gives Bills for the Amount of a gaming Debt, and when they were due he renewed them with the then Holder, and for the last Bills he confessed a Judgment. The Court of C. B. would not set aside the Judgment, unless he could affect the Holder of the Bills with Notice, but permitted him to try that Fact in an Issue.—*George v. Stanley*, 4 Taunt. 683.

(4) In *Young v. Moore*, 2 Wils. 67, it was insisted, that though the Statute had made all Writings and Securities for Money won at Play void, that it had not made parol Contracts for Money won at Play void, to this it was answered and resolved by the Court, that as the Statute hath made all Securities for Money won at Play void *a fortiori* all parol Contracts of this Sort are void, and the Court distinguished the Case from that of *Barjeau v. Walsmsley*, *infra* Note 7, on the Ground of the latter being for Money lent. It is observable, that this Provision as to avoiding the Security makes no Distinction between the Gaming being for 10*l.* or less; and that by the express Terms of the Statute a Security for Money won by gaming, although less than 10*l.* would be void. In *Blaxton v. Pye*, 2 Wils. 309, it was held, that upon a Bet of 1*l.* against 8*l.* on a Horse Race, no Action could be maintained against the Loser of 8*l.* as

into, or executed by any Person or Persons whatsoever, where the whole or any Part of the Consideration of such Conveyances or Securities shall be for any Money, or other valuable Thing whatsoever, won by Gaming or playing at Cards, Dice, Tables, Tennis, Bowls or other Game or Games (5) whatsoever, or by betting on the

No. 5.
9 Anne, c. 24.

he would not have been entitled to receive the 14*l.* and that the Contract was therefore *nudum pactum*, and the same was decided in *Clayton v. Jennings*, 2 Bl. Rep. 706; and Lord Kenyon, referring to the Cases of *Blaxton v. Pye*, in *Good v. Elliott*, 3 T. R. 706, said, that had the Wager been within the Limits allowed by the Statutes, there is no doubt but that it would have been held good; in *Bulling v. Frost*, 1 Esp. Cas. N. P. his Lordship held, that an Action might be maintained to recover the Sum of 3*l.* 10*s.* lost at All-fours; and in *McAllister v. Huden*, 2 Campb. N. P. 438, it was ruled, by Lawrence, J. that an Action might be maintained upon a Wager for less than 10*l.* on a Horse Race. It seems, however, very doubtful whether in any of these Cases the present Provisions of the Statute was sufficiently adverted to; and whether the Enactment, that all Securities for Money won by Gaming should be void, ought not to be considered as vitiating all Contracts for Money so won, so far as affects the Right of Recovery, although the subsequent Provision for recovering back Money actually paid relates only to Sums amounting to 10*l.* In the Case of *Young v. Moore*, the Action was for above 10*l.* and the Question consequently did not arise;—but see Note 7, *post*.

(5) In *Jeffereys v. Walter*, 1 Wils. 220, the Court of B. R. inclined to give Judgment for the Defendant, that Cricket was a Game within the Statute, but the Case stood over and the Parties agreed. In *Goodburn v. Manley*, 2 Str. 1159, it was held, that a Wager on a Horse Race was a Game within this Act, being mentioned in the Statute 16 Chas. II.; and in *Lynall v. Longbottom*, 2 Wills. 36, determined upon a different Ground, it was said, by Willis, J. in delivering the Opinion of the Court, it is agreed on all Hands that a Foot-race is a Game within the Statute 9 Anne; and in *Brown v. Berkeley*, Cowp. 282, the Court, upon the Authority of that Case, ruled a Foot-race against Time to be within the Act, and gave Judgment for the Defendant in an Action of Covenant upon such a Wager. The Case of *Blaxton v. Pye*, mentioned in the last Note, and several other Cases also, clearly treat Horse Racing as a Game within the Statute.

In *Clayton v. Jennings*, 2 Bl. Rep. 706, (referred to in the preceding Note,) Aston, J. mentioned the Case of *Connor v. Quick*, in the King's Bench about ten Years before, when the Court took a Distinction between racing a Horse for 50*l.* which was lawful, and betting on the Side of a Horse which was not so.—(But see the last Note.)

In *Johnson v. Burns*, 4 T. R. a Wager under 10*l.* upon a Horse Race for less than 50*l.* (prohibited by Statute 13, G. III. c. 19) was ruled to be illegal. In *Ximenes v. Jaques*, 6 T. R. 499, Judgment was arrested in an Action on a Wager for 100 Guineas, that the Plaintiff would perform a Journey in a Post-Chaise and Pair within a given Time, but no Reasons for the Judgment were stated by the Court. In *Whaley v. Pigot*, 2 B. & P. 51, Judgment was arrested in an Action on a Wager that a Horse of the Defendant should perform a Journey in a less Time than two Horses of the Plaintiff, to be placed on the Road as the Plaintiff should think proper. Lord Eldon, after generally noticing the Provisions of the Statutes, 16 Charles II. and 9 Anne, said, “The 16 Chas. II. does not in Terms avoid any Contract—[which Observation, however, is not correct, the second Section making an express Provision to that Effect]—but the Transaction on which the Contract is founded being prohibited, the Contract itself cannot be supported. The 9th of Anne expressly avoids the Contract—[but see the preceding Note.] These Statutes were followed by 13 Geo. II. c. 19, and 19 Geo. II. c. 34; but if many Contracts founded in Horse-racing have been held illegal previous to these Statutes, it might be found difficult to maintain that such Horse-racing could now be deemed legal which before had been deemed illegal. But the 13 Geo. II. having prohibited many Species of Horse racing, the Law seems to have implied that such Species of Horse-racing as were not prohibited by that Statute by not being prohibited became legal; and the 18th George II. having taken away some of the Prohibitions and Penalties of 13 Geo. II. the same kind of Reasoning seems to have been applied, namely, that these Species of Racing, with respect to

No. 5.
9 Anne, c. 14.

Sides(6) or Hands of such as do game at any of the Games aforesaid, or for the reimbursing or repaying any Money knowingly lent, or advanced for such gaming or betting (7) as aforesaid, or lent or advanced at the Time and Place of such Play, to any Person or Persons, so gaming or betting as aforesaid, or that shall, during such Play, so

which certain Restrictions were taken away, were thereby altogether legalized. There seems to be much Ground for arguing from the Nature of the 16th Charles II. and 9th Anne, that these Acts ought to be construed strictly, in order to enforce the Principles on which they are founded, namely, to prohibit all Horse-racing; and that the 13th and 18th of Geo. II. are from their Nature to be so construed as to encourage the Breed of Horses, and to permit that Species of Horse-racing only called Racing on the Turf. It is to be observed, that the 13 Geo. II. speaks of Entering, Placing, Starting, &c. and that the Expression 'any Place or Places whatever,' used in 18 Geo. II. can hardly mean England; and afterwards, on delivering the Opinion of the Court, his Lordship said, "Upon Inquiry of the Judges of the Court of King's Bench we find that the Judgment of that Court in *Ximenes v. Jaques*, proceeded on an Opinion, that the 13th and 18th Geo. II. relate to *lona fide* Horse-racing only; without, therefore, again entering into the Grounds before stated, it is sufficient for me to declare it to be the Opinion of the Court, that the Transaction described in this Case is not that Species of Horse-race or Match which is legalized by 13 and 18 Geo. II. and consequently that this Action cannot be maintained." By a Note inserted in Mr. Nolan's Edition of *Strange to the Case of Goodburn v. Manley*, it appears that it was objected in that Case, that inasmuch as a late Statute was made against Horse-racing, that was an Argument that Horse-racing was not published by any of the former Laws. for if it were, this Statute need not have been made; and, therefore, it was said it would not be within the Statute of the 9th of Anne; but to this it was answered by the Court, that though Horse-racing might not be unlawful, yet Betting at Horse Races was so; and that the late Act of Parliament speaks only of Running of Horses or Horse-racing, but speaks nothing of Betting at Horse-races, which is the present Case, and, therefore, that Rule cannot anyway affect the present Case.

I certainly cannot see any legitimate Ground on which it could be held, that the Statute of 13th Geo. II. (the Title and Language of which are altogether prohibitory,) could be admitted to give Validity to Contracts, which, independently of those Statutes, would be considered illegal; and there seems to be much more Weight in the Argument that the express Prohibition of such Races, under particular Circumstances, afforded Evidence of their being considered as legal; independently of those Prohibitions, although certainly many Acts are passed which manifest a great want of Attention to the real Purport and Effect of preceding Enactments. And in some of the Cases which have occurred the Attention seems to have been rather directed to the Enquiry, whether the Statutes of Geo. II. contained an Exception to the Prohibitions assumed to be contained in the preceding Statutes, than to the Question how far such Prohibitions really attached, and it is very difficult to reconcile some of the Cases with the established Doctrine as to the general Validity of Wagers not affected by particular Grounds of Objection.

(6) In an Action for recovering Money won on a Bet, that J. C. could not run a certain Distance in a given Time, the Court directed a Nonsuit—because it did not appear upon the Statement of the Case, that J. C. was playing at a Game called a Foot Race, and as it did not appear that he was playing at any Game, there could not be any betting on his side.—*Lynall v. Longbottom*, 2 Wills. 36.

(7) In *Baijeau v. Walsley*, 2 Str. 1249, the Plaintiff and Defendant gam'd together at tossing up, and the Plaintiff having won all the Defendant's Money lent him Ten Guineas at a Time and won it, till the Defendant had borrowed 120 Guineas, and in an Action to recover the Money, Lee, C. J. held, that this was not a Case within the Act, for there is not the Word *Contract*, as in the Statute of Usury, and the Word *Securities*, as it stands in the Act, must mean lasting Securities upon the Estate. The Parliament (he said) might think there would be no great Harm in a parol Contract, where the Credit was not likely to run very high, and therefore confined the Act to written Securities, wherefore the Plaintiff obtained a Verdict.

play or bet, shall be utterly void, frustrate, and of none Effect, to all Intents and Purposes whatsoever; any Statute, Law, or Usage to the contrary thereof in any wise notwithstanding; and that where such Mortgages, Securities or other Conveyances, shall be of Lands, Tenements or Hereditaments, or shall be such as incumber or affect the same, such Mortgages, Securities or other Conveyances, shall enure and be to and for the sole Use and Benefit of, and shall devolve upon such Person or Persons as should or might have, or be entitled to such Lands, Tenements or Hereditaments in case the said Grantor or Grantors thereof, or the Person or Persons so incumbering the same, had been naturally dead, and as if such Mortgages, Securities or other Conveyances, had been made to such Person or Persons so to be intitled after the Decease of the Person or Persons so incumbering the same; and that all Grants or Conveyances to be made for the preventing of such Lands, Tenements or Hereditaments, from coming to or devolving upon such Person or Persons hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent and void, and of none Effect, to all Intents and Purposes whatsoever.

No. 5.
9 Anne, c. 14.
And where such Mortgage, &c. shall incumber any Lands, &c. they shall devolve to such Person as should have been intitled to them, in case such Grantor had been dead, &c.
And all Conveyances to hinder such Lands from devolving, &c. shall be void.
See 2 Bur. 1080.
1 Wills 220.
2 Wills. 36, 67, 309.

II. And be it further enacted by the Authority aforesaid, That from and after the said first Day of May, One Thousand Seven Hundred and Eleven, any Person or Persons whatsoever, who shall at any Time or Sitting, (3) by playing at Cards, Dice, Tables or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do play at any of the Games aforesaid, lose to any one or more Person or Persons so playing or betting, in the whole the Sum or Value of Ten Pounds, and shall pay or deliver the same or any Part thereof, the Person or Persons, so losing and paying or delivering the same, (9) shall be at Liberty, within three Months then next, to sue for and recover the Money or Goods so lost, and paid or delivered or any Part thereof, from the respective Winner and Winners (10) thereof, with Costs of Suit, by Action of Debt, founded on this

The of 10l.
&c. s. , &c.
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Months
See 4 Bur. 2013.

In *Allanbrook v. Hall*, 2 Wils. 309, the Defendant having lost above £10 upon a Bet, at a Horse Race, requested the Plaintiff to pay it for him, which he did, and the Defendant objected, that this Money being lost at Gaming, and recoverable back again by the Statute 9 Anne, the Action would not lie; but the Court held, that this was not a Case within the Statute, upon the Ground stated in the preceding Case, and gave Judgment for the Plaintiff. In *Robinson v. Bland*, 2 Barr. 1077—1 Bl. 234, 256, it was ruled, that a Bill of Exchange given in France by one British Subject to another, the Consideration of which was partly Money won at Play, and partly Money lent to play with, was void for the whole; but that the Plaintiff might recover, on the common Courts, the Money lent. The Case contains some important Views with Respect to the general Question of the Legality of a Contract entered into in a different Country.

(8) In *Bower v. Booth*, 2 Bl. Rep. 528, the Court held, that Money won between Monday Evening and Tuesday Evening, the Parties having been gaming without interruption, except for an Hour when the Parties were at Dinner, without parting Company, was won at one Sitting. Per Blackstone, J.—To lose £10 at one Time is to lose it at a single Stake or Bet. To lose it at one Sitting is to lose it in a Course of Play where the Company never parts, though the Person may not be actually gaming the whole Time; and by Gould and Nares—The Statute, with respect to the Party losing, is remedial, not penal—although (by Nares) it is penal, where the Action is brought by a common Informer:—so by Gould, with respect to a proceeding on that Branch of the Act which inflicts Pillory or other corporal Punishment.

(9) This Right passes to the Assignees under a Commission of Bankrupt.—*Brandon v. Sands*, 2 Ves. jun. 614—*Brandon v. Pate*, 2 H. B. 308.

(10) To an Action founded on the Statute, the Defendant may plead in Abatement, that the Money was due from others as well as himself.—*Bristow v. James*, 7 T. R. 527.

No. 5.
9 Anne, c. 14.

And if the Losers do not sue, &c. any other Person may;

and recover with treble Value; one Moiety to the Informer, the other to the Poor.

The Person sued shall answer upon Oath to discover the Money won.

The Person who shall so discover and repay shall be indemnified from further Punishment.

Any Person winning by Fraud &c. above 10l. at one Sitting, and convicted thereof on Indictment, &c. shall to wit five times the Value, be deemed an Informer, and suffer in Cases of wilful Perjury.

Act, (11) to be prosecuted in any of her Majesty's Courts of Record, in which Actions or Suits no Essoin, Protection, Wager of Law, Privilege of Parliament, or more than one Imparance shall be allowed; in which Action it shall be sufficient for the Plaintiff to allege, that the Defendant or Defendants are indebted to the Plaintiffs, or received to the Plaintiff's Use, the Monies so lost and paid, or converted the Goods won of the Plaintiff to the Defendant's Use, whereby the Plaintiff's Action accrued to him, according to the Form of this Statute, without setting forth the Special Matter; and in case the Person or Persons who shall lose such Money or other Thing as aforesaid, shall not within the Time aforesaid, really and *bona fide*, and without Covin or Collusion, sue, and with Effect prosecute for the Money or other Thing, so by him or them lost, and paid or delivered as aforesaid, it shall and may be lawful to and for any Person or Persons, by any such Action or Suit as aforesaid, to sue for and recover the same, and Treble the Value thereof, with Costs of Suit, against such Winner or Winners as aforesaid; the one Moiety thereof to the Use of the Person or Persons that will sue for the same, and the other Moiety to the Use of the Poor of the Parish where the Offence shall be committed.

III. And for the better Discovery of the Monies or other Thing so won, and to be sued for and recovered as aforesaid, it is hereby further enacted by the Authority aforesaid, That all and every the Person or Persons, who by virtue of this present Act shall or may be liable to be sued for the same, shall be obliged and compellable to answer upon Oath such Bill or Bills as shall be preferred against him or them, for discovering the Sum and Sums of Money, or other Thing so won at Play as aforesaid,

IV. Provided always, and be it nevertheless enacted by the Authority aforesaid, That upon the Discovery and Repayment of the Money, or other Thing so to be discovered and repaid as aforesaid, the Person or Persons who shall so discover and repay the same as aforesaid, shall be acquitted, indemnified and discharged from any further or other Punishment, Forfeiture or Penalty, which he or they may have incurred by the playing for, or winning such Money or other Thing so discovered and repaid as aforesaid; any former or other Statute, Law or Usage, or any Thing in this present Act contained to the contrary thereof in any wise notwithstanding.

V. And be it further enacted by the Authority aforesaid, That if any Person or Persons whatsoever, at any Time or Times, after the said first Day of May, One Thousand Seven Hundred and Eleven, do or shall, by any Fraud or Shift, Cousemage, Circumvention, Deceit or unlawful Device, or ill Practice whatsoever, in playing at or with Cards, Dice, or any the Games aforesaid, or in or by bearing a Share or Part in the Stakes, Wagers or Adventures, or in or by betting on the Sides or Hands of such as do or shall play as aforesaid, win, obtain or acquire to him or themselves, or to any other or others, any Sum or Sums of Money or other valuable Thing or Things whatsoever, or shall at any one Time or Sitting, win of any one or more

(11) In *Trower v. a Mare*, lost upon a Gaming Contract, (the Action being commenced after three Months,) it was ruled, that the Plaintiff was not intitled to recover, on account of the general Invalidity of the Contract; and by *Heath, J.*—There is no substantive Clause in the Act, which avoids the Contract; it only renders it liable to be defeated *sub modo*, for which Purpose the Plaintiff must bring his Action in a limited Time.—And in *Thistlewood v. Crookroft*, 1 M. & S. 402, it was held that Money fairly lost at Play could not be recovered back as paid without Consideration, in an Action for Money had and received, not concluding according to the Form of the Statute.

Person or Persons whatsoever, above the Sum or Value of Ten Pounds; that then every Person or Persons so winning by such ill Practice as aforesaid, or winning at any one Time or Sitting above the said Sum or Value of Ten Pounds, and being convicted of any of the said Offences, upon an Indictment or Information to be exhibited against him or them for that Purpose, shall forfeit five Times the Value of the Sum or Sums of Money, or other Thing so won as aforesaid; and in case of such ill Practice as aforesaid, shall be deemed infamous, and suffer such Corporal Punishment, as in Cases of wilful Perjury; and such Penalty to be recovered by such Person or Persons as shall sue for the same by such Action as aforesaid.

VI. And whereas divers lewd and dissolute Persons, live at great Expences, having no visible Estate, Profession or Calling to maintain themselves, but support those Expences by gaming only; Be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for any two or more of her Majesty's Justices of the Peace, in any County, City or Liberty whatsoever, to cause to come or to be brought before them, every such Person or Persons within their respective Limits, whom they shall have just Cause to suspect to have no visible Estate, Profession or Calling to maintain themselves by, but do for the most Part support themselves by Gaming; and if such Person or Persons shall not make it appear to such Justices, that the principal Part of his or their Expences is not maintained by Gaming, that then such Justices shall require of him or them sufficient Securities for his or their good Behaviour for the Space of twelve Months; and in Default of his or their finding such Securities, to commit him or them to the common Gaol, there to remain until he or they shall find such Securities as aforesaid.

No. 5.
9 Anne, c. 19.

Two Justices may cause Persons who have no visible Estate, &c. to be brought before them, and they shall find Securities for their good Behaviour, or be committed.

VII. And be it enacted by the Authority aforesaid, That if such Person or Persons so finding Securities as aforesaid, shall, during the Time for which he or they shall be so bound to the good Behaviour, at any one Time or Sitting, play or bet for any Sum or Sums of Money or other Thing, exceeding in the whole the Sum or Value of twenty Shillings, that then such Playing shall be deemed or taken to be a Breach of his or their Behaviour, and a Forfeiture of the Recognizance given for the same.

Persons so finding Securities, and playing for 20s. forfeit their Recognizance.

VIII. And for the preventing of such Quarrels as shall and may happen upon the Account of Gaming; Be it further enacted by the Authority aforesaid, That in case any Person or Persons whatsoever, shall assault and beat, or shall challenge or provoke to fight, any other Person or Persons whatsoever, upon Account (12) of any Money won by gaming, playing or betting at any of the Games aforesaid, such Person or Persons assaulting and beating, or challenging or provoking to fight, such other Person or Persons upon the Account aforesaid, shall, being thereof convicted upon an Indictment or Information to be exhibited against him or them for that Purpose, forfeit to her Majesty, her Heirs and Successors, all his Goods, Chattels and Personal Estate whatsoever, and shall also suffer Imprisonment without Bail or Mainprize, in the Common Gaol of the County where such Conviction shall be had, during the Term of two Years.

Assaulting &c. on Account of Money won at Play, to forfeit all his Goods, and be imprisoned two Years.

(12) In *Rex v. Randal*, 1 East. P. C. 423, Buller, J. expressed an Opinion, that Judgment could only be given on this Clause, in Case the Assault was committed at the Time of Play; but in *Rex v. Daryl*, 4 East. 174, it was expressly ruled, that if the Jury find, that the Assault was on Account of Money won at Play, the Case is within the Statute, although the Assault was committed at a subsequent Time, and at a different Place, and after abusive Language between the Parties in respect of the Money won—and Judgment was given accordingly.

No. 5.

9 Anne, c. 14.
This Act shall not
extend to prevent
Gaming in any of
the Queen's Pa-
laces during her
Residence there,
&c.

IX. Provided always, That nothing in this Act contained shall extend to prevent or hinder any Person or Persons from gaming or playing at any of the Games aforesaid, within any of her Majesty's Palaces of *St. James* or *Whitehall*, during such Time as her Majesty, her Heirs or Successors, shall be actually resident at either of the said two Palaces, or in any other Royal Palaces, where her Majesty, her Heirs or Successors, shall be actually resident, during the Time of such actual Residence, so as such Playing be not in any House, Lodging, or other Part of any of the said Palaces, the Freehold or Inheritance whereof is or shall be out of the Crown, or is or shall be in Lease to any Person or Persons, during such Time as such Freehold and Inheritance shall be out of the Crown, or such Lease shall continue, and so as such Playing be for ready Money only.

No. 6.

10 Anne, c. 26.—An Act for laying additional Duties on Hides and Skins, Vellum and Parchment, and new Duties on Starch, Coffee, Tea, Drugs, Gilt and Silver Wire, and Policies of Insurance, to secure a yearly Fund for Satisfaction of Orders to the Contributors of a further Sum of one million eight hundred thousand Pounds towards her Majesty's Supply; and for the better securing the Duties on Candles; and for obviating Doubts concerning certain Payments in *Scotland*; and for suppressing unlawful Lotteries, and other Devices of the same Kind; and concerning Cake Sope; and for Relief of *Mary Ravenall*, in Relation to an Annuity of eighteen Pounds *per Annum*; and concerning Prize Cocoa Nuts brought from *America*; and certain Tickets which were intended to be subscribed into the Stock of the *South Sea Company*; and for appropriating the Monies granted in this Session of Parliament.

[Inserted Part VI. Class XX. No. 6.]

No. 7.

3 George I. c. 2.—An Act for continuing the Duties on Malt, Mum, Cyder and Perry, to raise Money by way of a Lottery, for the Service of the Year One Thousand Seven Hundred and Twenty-two; and for transferring the Deficiencies of a late Malt Act to the Land Tax for the said Year; and for giving Time for inserting the Money given with Apprentices in their Indentures; and touching lost Bills, Tickets or Orders; and for exchanging the Tickets in the Exchequer for Certificates; and for suppressing Lotteries denominated Sales, and other private Lotteries; and for en-

larging the Time for the Accountant General of the Bank of *England* to return Duplicates of Annuities into the Exchequer.

[Inserted Part VI. Class XX. No. 7.]

No. 8.

- 9 George I. c. 19.—An Act to continue the Duties for Encouragement of the Coinage of Monies; and for Relief of *William* late Lord *Widdrington*; and to prevent Foreign Lotteries being carried on in this Kingdom; and for ascertaining the Duties on bound Books imported; and for issuing Certificates and Debentures for Arrears due to five Regiments, to be satisfied by Annuities therein mentioned; and for discharging the Duties of Rock-Salt lost on the Rivers *Weaver* and *Mercy*; and for limiting the Times of Continuance of Commissioners for forfeited Estates in *England* and *Scotland* respectively; and for appropriating the Supplies granted to his Majesty in this Sessions of Parliament; and to rectify the Misnomers and Omissions of Commissioners for the Land Tax, in the Year One Thousand Seven Hundred and Twenty-three.

[Inserted Part VI. Class XX. No. 8.]

No. 9.

- 2 George II. c. 28.—An Act to revive the Laws therein mentioned, relating to the Importation of foreign Brandy, and other Waters and Spirits; for Importation of Cochineal; to continue several Acts for preventing Frauds in the Customs; for Encouragement of the Silk Manufactures of this Kingdom; for making Copper Ore of the *British* Plantations an enumerated Commodity; for making perpetual an Act therein mentioned, for suppressing of Piracy; for enabling Persons prosecuted upon the *Capias*, in relation to the running of Goods, to defend in *Forma Pauperis*; for more effectual barring of unlawful Games; for licensing Retailers of Brandy, and other distilled Liquors, and for better Regulation of Licences for common Inns and Alehouses.

[Inserted Part VI. Class XX. No. 9.]

No. 10.

- 6 George II. c. 35.—An Act for appointing Commissioners to examine, state and report who of the Sufferers in the *Charitable Corporation* are Objects of

Compassion, according to the Descriptions therein mentioned; and for giving Relief to such Sufferers; and for enforcing the Laws made against Foreign Lotteries; and for empowering the said Commissioners to hear and determine the Claims of such Creditors and Proprietors of the said Corporation, as have not made their Claims within the Time limited by an Act made in the last Session of Parliament, *for taking, stating and determining all the Claims and Demands of the Creditors of the said Corporation, and of all Persons claiming any Share or Interest in the Stock or Fund of the said Corporation.*

[Inserted Part VI. Class XX. No. 10.]

No. 11.

12 George II. c. 28.—An Act for the more effectual preventing of excessive and deceitful Gaming.

[Inserted Part VI. Class XX. No. 11.]

No. 12.

13 George II. c. 19.—An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament, intituled, *An Act for the more effectual preventing of excessive and deceitful Gaming.*

[Inserted Part VI. Class XX. No. 12.]

No. 13.

18 George II. c. 34.—An Act to explain, amend, and make more effectual the Laws in being, to prevent excessive and deceitful Gaming; and to restrain and prevent the excessive Increase of Horse Races.

18 Geo. II. c. 34.

WHEREAS notwithstanding the many good and wholesome Laws now in being, for preventing excessive and deceitful Gaming, many Persons of ill Fame and Reputation, who have no visible Means of Subsistence, do keep Houses, Rooms, and other Places for playing, and do permit Persons therein to play at Cards, Dice, and other Devices, for large Sums of Money, by Means whereof divers young and unwary Persons, and others, are drawn in to lose the greatest Part, and sometimes all their Substance; and it frequently happens, they are thereby reduced to the utmost Necessities, and betake themselves to the most wicked Courses, which end in their utter Ruin: And whereas a certain pernicious Game called *Roulet, or Roly-poly*, is daily practised, and the Laws now in being have, by Experience, been found ineffectual to put a Stop to such pernicious Practices: For Remedy whereof, may it please your

Majesty that it may be enacted; And be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of June One Thousand Seven Hundred and Forty-five, no Person or Persons, of what Condition soever, shall keep any House, Room, or Place for playing, or permit or suffer any Person or Persons whatsoever, within any such House, Room, or Place, to play at the said Game of Roulet, otherwise Roly-poly, or at any other Game, with Cards or Dice, already prohibited by the Laws of this Realm; and in Case any Person or Persons whatsoever shall keep any such House, Room, or Place for playing, or permit or suffer any Person or Persons as aforesaid to play at the said Game of Roulet, otherwise Roly-poly, or at any other Game, with Cards or Dice already prohibited by Law, such Person or Persons so offending shall incur the Pains and Penalties, and be liable to such Prosecution as is directed in and by an Act made in the Twelfth Year of the Reign of his present Majesty, intituled, *An Act for the more effectual preventing excessive and deceitful Gaming.*

No. 13.
18 Geo. II. c. 34.

No Person shall keep a Place for playing Roly-poly, or other Game with Cards or Dice.

under Penalties of 12 Geo. II. c. 24.

II. And be it further enacted by the Authority aforesaid, That if any Person or Persons whatsoever shall, after the said twenty-fourth Day of June One Thousand Seven Hundred and Forty-five, play at the said Game of Roulet, otherwise Roly-poly, or at any Game or Games with Cards or Dice, already prohibited by Law, every such Person or Persons so offending shall also incur the Pains and Penalties, and be liable to such Prosecution, as is directed in and by an Act made in the Twelfth Year of the Reign of his present Majesty, intituled, *An Act for the more effectual preventing excessive and deceitful Gaming.*

Persons playing shall incur the Penalties of 12 Geo. II. c. 24.

III. And whereas in and by a certain Statute, made in the Ninth Year of the Reign of her late Majesty Queen ANNE, intituled, *An Act for the better preventing excessive and deceitful Gaming*, it is (amongst other Things) enacted, That from and after the first Day of May One Thousand Seven Hundred and Eleven, any Person or Persons whatsoever, who should at any Time or Sitting, by playing at Cards, Dice, Tables, or other Game or Games whatsoever, or by betting on the Sides or Hands of such who do play at any of the Games aforesaid, lose to any one or more Person or Persons so playing or betting, in the whole, the Sum of Ten Pounds, and should pay and deliver the same, or any Part thereof, the Person or Persons so losing, or paying or delivering the same, should be at Liberty within three Months then next, to sue for, and recover the Money or Goods so lost and paid, or delivered, or any Part thereof, from the respective Winner or Winners thereof, with Costs of Suit; to be sued for, and recovered by Action of Debt, founded on the said Act, to be prosecuted in any of her then said Majesty's Courts of Record; in which Actions or Suits no Essoin, Protection, Wager of Law, Privilege of Parliament, or more than one Imparlance should be allowed, with further Directions, as in the said Act are particularly set forth: And whereas for the better Discovery of the Monies, or any Thing so won, and to be sued for as aforesaid, it is by the said Statute enacted, That all and every Person or Persons, who by virtue of the said Statute should or might be liable to be sued for any such Sum or Sums of Money, or valuable Thing, should be obliged and compelled to answer, upon Oath, such Bill or Bills, as should be preferred against him or them, for the Discovery of the Sum or Sums of Money to be won at Play as aforesaid; but no Provision is made, or Authority given to any Court of Equity to decree the same to be paid; Be it enacted by the Authority aforesaid, That

9 Anno. c. 14.

No 13. from and after the said twenty-fourth Day of June One Thousand Seven Hundred and Forty-five, in case any Bill or Bills shall be brought, exhibited and filed in any Court of Equity, against any Person or Persons, for any Sum or Sums of Money won by any Person or Persons after the said twenty-fourth Day of June One Thousand Seven Hundred and Forty-five, contrary to the true Intent and Meaning of the said Act, it shall and may be lawful for such Court, wherein such Bill shall be brought, exhibited and filed, to proceed and decree thereupon, and enforce such Decree or Decrees, as shall be made in pursuance thereof, in the same Manner as is practised and used in other Causes, upon Bills and Answers depending in the Courts where such Bill shall be so brought and exhibited.

On Information
for any Offence
against this Act,

or 12 G. II. c. 28.

or 13 G. II. c. 19.

Persons may be
summoned to give
Evidence,

who, on Neglect
or Refusal to ap-
pear, or giving
false Evidence,
shall forfeit 50l.

or be committed
for 6 Months.

No Person inca-
pable of being a
Witness, (except
the Parties) for
having played, bet-
ted, &c.

Proviso for Roy-
al Palaces, &c.

Privilege of
Parliament, &c.

IV. And for the more easy Conviction of Persons offending against this or any former Act, for preventing excessive and deceitful Gaming; be it enacted by the Authority aforesaid, That it shall and may be lawful to and for such Person or Persons, who have Jurisdiction to hear and determine Informations, upon the Statutes against excessive and deceitful Gaming, upon any Information exhibited before them, for any Offence committed against this Act, or against the Statute made in the Twelfth Year of his present Majesty, intituled, *An Act for the more effectual preventing of excessive and deceitful Gaming*; or against one other Act made in the Thirteenth Year of the Reign of his present Majesty, intituled, 'An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament;' intituled, *An Act for the more effectual preventing excessive and deceitful Gaming*; to summon any Person or Persons, other than the Party accused, to appear before them, at a certain Day, Time and Place, to be inserted in such Summons, and to give Evidence for the Discovery of the Truth of the Matter in the said Information contained; and in case of Neglect or Refusal to appear, or if upon Appearance, such Person or Persons shall refuse to give Evidence, or shall give any false Evidence, every such Person or Persons so offending, shall forfeit and lose the Sum of Fifty Pounds; to be levied by Distress and Sale of the Offenders Goods and Chattels, by Warrant under the Hands and Seals of such Persons issuing such Sums as aforesaid; and in case such Person or Persons not appearing, or neglecting, or refusing to give such Evidence, or giving any false Evidence, shall not have sufficient Goods and Chattels, whereon to levy the said Sum of Fifty Pounds, every such Person or Persons shall be, by such Person or Persons, having Jurisdiction as aforesaid, committed to the Common Gaol for the County, City or Place, where such Offence shall be committed, there to remain for the Space of six Months, without Bail or Mainprize.

V. And be it further enacted by the Authority aforesaid, That from and after the Twenty-fourth Day of June One Thousand Seven Hundred and Forty-five, no Person or Persons, other than the Parties, Plaintiff and Defendant in the Cause, shall be incapacitated from being a Witness, touching any Offence committed against the Laws for preventing excessive and deceitful Gaming, by reason of having played, betted or staked at any Game prohibited by this or any of the said Statutes.

VI. Provided also, and it is hereby enacted and declared, That nothing in this Act contained shall extend to prevent or hinder any Person or Persons from playing at any Game whatsoever, within any of his Majesty's Royal Palaces, wherein his Majesty, his Heirs and Successors, shall then actually reside.

VII. And be it further enacted by the Authority aforesaid, That no Privilege of Parliament shall be allowed to any Person or Persons whatsoever against whom any Prosecution or Proceedings shall be

commenced or had, for keeping of any publick or common Gaming-house, or any House, Room, or Place for playing at any Game or Games prohibited by this, or any other Act now in being, against excessive or deceitful Gaming; any Law, Usage, or Custom to the contrary in any wise notwithstanding.

No. 13.
18 Geo. II. c. 34.

VIII. And be it enacted by the Authority aforesaid, That if any Person, after the Commencement of this Act, shall win or lose at Play, or by Betting, at any one Time, the Sum or Value of Ten Pounds, or within the Space of twenty-four Hours the Sum or Value of Twenty Pounds, such Person shall be liable to be indicted for such Offence within six Months after it is committed, either before his Majesty's Justices of the King's Bench, Assize, Gaol Delivery or Grand Sessions; and being thereof legally convicted, shall be fined five Times the Value of the Sum so won or lost; which Fine (after such Charges as the Court shall judge reasonable allowed to the Prosecutors and Evidence out of the same) shall go to the Poor of the Parish or Place where such Offence shall be committed.

Persons losing
10l. at one Time,
or 20l. in 24 Hours,
may be indicted;

and fined five
Times the Value.

IX. Provided nevertheless, That if any Person so offending shall discover any other Person so offending, so that such Person be thereupon convicted, the Person so discovering shall be discharged and indemnified from all Penalties, by reason of any such Offence, if such Person so discovering hath not been before convicted thereof, and shall be admitted as an Evidence to prove the same.

Offenders dis-
covering others
discharged.

X. Provided always, and it is hereby declared, That nothing in this Act contained shall extend, or be construed to extend, to repeal or invalidate an Act made in the ninth Year of the Reign of her late Majesty Queen Anne, intituled, *An Act for the better preventing excessive and deceitful Gaming.*

9 Annæ, c. 14.

XI. And whereas in an Act passed in the thirteenth Year of his Majesty's Reign, intituled, *An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament, intituled, An Act for the more effectual preventing of excessive and deceitful Gaming*; it is (among other Things) enacted, That from and after the twenty-fourth Day of June One Thousand Seven Hundred and Forty, no Horse, Mare or Gelding, being of the Age of six Years, shall be entered, started, or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare, or Gelding, shall carry ten Stone Weight, computing fourteen Pounds to each Stone Weight; and that no Horse, Mare, or Gelding, being of the Age of six Years, shall be entered, started, or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare, or Gelding shall carry eleven Stone, computing fourteen Pounds to each Stone Weight; and that no Horse, Mare, or Gelding, being of the Age of seven Years, shall be entered, started, or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare, or Gelding, shall carry twelve Stone Weight, computing fourteen Pounds to each Stone Weight; and in case any Person or Persons shall enter, start, or run any Horse, Mare, or Gelding, of either of the Ages aforesaid, for any Plate, Prize, Sum of Money, or other Thing, carrying less than the Weights herein before directed to be carried, such Horse, Mare, or Gelding, or the Value thereof, shall be forfeited; and the Person or Persons so entering, starting, or running such Horse, Mare, or Gelding, shall forfeit and lose the Sum of two hundred Pounds: And whereas the thirteen Royal Plates of one hundred Guinea each, annually run for, as also the high Prizes that are constantly given for Horses of Strength and Size, are sufficient to encourage Breeders to raise their Cattle to the utmost Size and Strength possible; Be it therefore enacted by the Authority aforesaid, That

13 G. II. c. 19.
Sec. 3.

No. 13. it shall and may be lawful for any Person or Persons, from and after
 18 Geo II. c. 34. the twenty-fourth Day of *June* One Thousand Seven Hundred and
 Repealed. Forty-five, to run any Match, or to start and run for any Plate, Prize,
 Sum of Money, or other Thing, of the real and intrinsick Value of
 fifty Pounds or upwards, at any Weights whatsoever, and at any Place
 or Places whatsoever, without incurring or being liable to the Penalty
 or Penalties in the said Act of the thirteenth Year of his Majesty's
 Reign, relating to Weights as aforementioned, and in the same Man-
 ner, as might have been done if the said Act had never been made;
 any Thing herein contained to the contrary notwithstanding.

No. 14.

27 George III. c. 1.—An Act to render more effectual the
 Laws now in being for suppressing unlawful Lotteries.

[Inserted Part VI. Class XX. No. 15.]

No. 15.

54 George III. c. 40.—An Act for granting to His Ma-
 jesty a certain Sum of Money, to be raised by a
 Lottery.

[Inserted Part VI. Class XX. No. 16.]

No. 16.

42 George III. c. 119.—An Act to suppress certain
 Games and Lotteries not authorized by Law.

[Inserted Part VI. Class XX. No. 17.]

PART III. CLASS VIII.

STOCK JOBBING.

No. 1.

7 George II. c. 8.—An Act to prevent the infamous
* Practice of Stock Jobbing.

• **W**HEREAS great Inconveniences have arisen and do daily arise
• by the wicked, pernicious and destructive Practice of Stock
• Jobbing, whereby many of his Majesty's good Subjects have been
• and are diverted from pursuing and exercising their lawful Trades and
• Vocations, to the utter Ruin of themselves and Families, to the great
• Discouragement of Industry, and to the manifest Detriment of Trade
• and Commerce; For Remedy thereof, may it please your most Ex-
• cellent Majesty that it may be enacted, and be it enacted by the King's
• most Excellent Majesty, by and with the Advice and Consent of the
• Lords Spiritual and Temporal, and Commons, in this present Parlia-
• ment assembled, and by the Authority of the same, That all Contracts
• and Agreements whatsoever, which shall, from and after the first Day
• of June One Thousand Seven Hundred and Thirty-four, be made or
• entered into, by or between any Person or Persons whatsoever, upon
• which any Premium or Consideration in the Nature of a Premium
• shall be given or paid for Liberty to put upon, or to deliver, receive,
• accept, or refuse any Publick or Joint Stock, or other publick Secu-
• rities (1) whatsoever, or any Part, Share, or Interest therein, and also
• all Wagers and Contracts in the Nature of Wagers, and all Contracts
• in the Nature of Potts and Refusals, relating to the then present or
• future Price or Value of any such Stock or Securities, as aforesaid,
• shall be null and void to all Intents and Purposes whatsoever, (2) and

7 Geo. II. c. 8.

See 3 Bar. 2069.

All Contracts
made for Liberty
to put upon, ac-
cept or refuse any
Publick Stocks or
Securities, and
Wagers, &c. shall
be void, &c.

(1) Omnium is a Stock within the Act — *Brown v. Turner*, 7 T. R. 630.

(2) The Statute does not extend to a Contract on the Loan or Transfer of
Stock to replace the same Amount on a future Day — *Sanders v. Kentish*, 8 T.
R. 162.—A Broker contracting in his own Name for the Sale of Stock which
he was authorized to sell, and having, upon Default of his Principal, paid the
Difference between the Price and the Value at the Time when the Transfer was
to be made, cannot maintain an Action against the Principal for Money paid
to his Use, the Plaintiff not having been bound as Guarantee for the Transfer
of the Stock. — *Child v. Manby*, 8 T. R. 610.—In *Falkney v. Remond*, 4 Bur.
2069, the Plaintiff and Defendant having been engaged in Partnership in illegal
Stock Transactions, the Plaintiff paid £3000 for compounding the Difference,
and the Defendant gave him a Bond for a Moiety of the Money, which was
holden good. And in *Petrie v. Hannay*, 3 T. R. 478, one Party in a similar
Transaction having paid the Difference with the Privy and Consent of the
other, who accepted a Bill for the Amount, was allowed to recover. Conform-
able however as these Decisions are to the manifest Principles of Justice, they

No. 1.
7 Geo II. c. 8.

all Premiums, Sum or Sums of Money whatsoever, which shall be given, received, paid, or delivered, upon all such Contracts or Agreements, or upon any such Wagers, or Contracts in the Nature of Wagers, as aforesaid, shall be restored and repaid to the Person or Persons who shall give, pay, or deliver the same, who shall be at Liberty, within six Months from and after the making such Contract or Agreement, or laying any such Wager, to sue for and recover the same from the Person or Persons to whom the same is or shall be paid or delivered, with double Costs of Suit, by Action of Debt founded on this Act, to be prosecuted in any of his Majesty's Courts of Record, in which Action no Essoin, Protection, Wager of Law, or more than one Imparlance shall be allowed; and it shall be sufficient therein for the Plaintiff to alledge that the Defendant is indebted to the Plaintiff, or has received to the Plaintiff's Use, the Money or Premium so paid or received, whereby the Plaintiff's Action accrued to him, according to the Form of this Statute, without setting forth the special Matter.

Persons sued on
this Act obliged to
answer on Oath.

II. And for the better Discovery of the Monies or Premium which shall be given, paid, or delivered, and to be sued for and recovered, as aforesaid; it is hereby further enacted by the Authority aforesaid, That all and every the Person or Persons who, by Virtue of this present Act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer upon Oath such Bill as shall be preferred against him or them in any Court of Equity for discovering any such Contract or Wager, and the Sum of Money, or Premium so given, paid, or delivered, as aforesaid (3)

Security for Costs.

III. Provided always, That the Plaintiffs, Relators, or Informers in such Bill shall and do (at the Time of bringing or filing such Bill) give good and sufficient Security to answer and pay the Defendants in such Bill full Costs of Suit, in case such Costs shall be adjudged to the Defendants, and that no Person shall be obliged to appear or to answer such Bill until such Security is given.

Not Penalty on
making or execut-
ing such Putts
or Bargains.

IV. And be it further enacted by the Authority aforesaid, That all and every Person or Persons whatsoever, who shall enter into, make, or execute any such Contract, Bargain, or Agreement, upon which any Premium, or Consideration in the Nature of a Premium, shall be given or paid for Liberty to put upon, or to deliver, receive, accept, or refuse any Publick or Joint Stock, or other publick Securities whatsoever, or any Part, Share, or Interest therein, or any Contract or Bargain in the Nature of Putts and Refusals, as aforesaid, or shall lay any such Wager, or make any such Contract in the Nature of a Wager, as aforesaid, (except such Person or Persons who shall actually and *bona fide*, without Covin or Collusion, sue, and with Effect prosecute for the Recovery of the Money or Premium given, delivered, or paid by him, her, or them, as aforesaid; and also except such Person or Persons, who shall voluntarily, before any Action or Suit commenced, actually and *bona fide*, without Covin or Collusion, repay or tender, before one or more Witness or Witnesses, such Monies or Premium,

Exceptions.

have not been allowed to maintain their Authority, and cannot by any Subtlety of Reasoning be reconciled with the subsequent Cases of *Lesby v. Steers*, 6 T. R. 61—*Brown v. Turner*, 7 T. R. 630, which were decided in a much more summary manner than the magnitude and importance of the question required. But the King's Bench had then lost the powerful Aid of a Bailier.—The Principles of these respective Cases still continue the Subject of judicial Controversy. The Majority of Opinions will probably be found in Favour of the Doctrine which has always appeared to me to be as uncalled for by the Rules of Law as it is confessedly repugnant to the Principles of Justice.—See the Subject more fully discussed in the Appendix, No. 1, and see Class 3, No. 3, Note 1, *supra*.

(3) See the next Note.

as he, she, or they shall have had, taken, received, or been paid, as aforesaid; and also except such Persons who shall discover such Transactions in any Court of Equity (4) shall forfeit and pay the Sum of Five Hundred Pounds; and also all and every Brokers, Agents, Scriveners, or other Persons negotiating, transacting, or writing any such Contract, Bargain, or Agreement, as aforesaid, shall likewise forfeit and pay the Sum of Five Hundred Pounds; which said Penalties shall and may be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, in which no Essoin, Privilege, Protection, or Wager of Law, or more than one Imparlance, shall be allowed; one Moiety thereof to the Use of his Majesty, his Heirs, and Successors, and the other Moiety thereof to the Use of him, her, or them, who shall sue for the same.

V. And for preventing the evil Practice of compounding or making up Differences for Stocks or other Securities bought, sold, or at any Time hereafter to be agreed so to be, Be it further enacted by the Authority aforesaid, That no Money or other Consideration whatsoever (except as herein after is provided) shall, from and after the said first Day of June One Thousand Seven Hundred and Thirty-four, be voluntarily given, paid, had, or received, for the compounding, satisfying, or making up any Difference for the not delivering, transferring, having, or receiving any Publick or Joint Stock, or other public Securities, or for the not performing of any Contract or Agreement so stipulated and agreed to be performed; but that all and every such Contract and Agreement shall be specifically performed and executed on all Sides, and the Stock or Security thereby agreed to be assigned, transferred, or delivered, shall be actually so done, and the Money, or other Consideration thereby agreed to be given and paid for the same, shall also be actually and really given and paid; and all and every Person and Persons whatsoever, who shall, from and after the said first Day of June, One Thousand Seven Hundred and Thirty-four, voluntarily compound, make up, pay, satisfy, take, or receive, such Difference Money, or other Consideration whatsoever, for the not delivering, transferring, assigning, having, or receiving such Stock, or other Security so to be agreed to be delivered, transferred, assigned, had, or received, as aforesaid (except in the Manner herein after provided) shall forfeit and pay the Sum of one hundred Pounds, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, in which no Essoin, Privilege, Protection, or Wager of Law, or more than one Imparlance, shall be allowed; one Moiety thereof to the Use of his Majesty, his Heirs and Successors, and the other Moiety thereof to the Use of him, her, or them, who shall sue for the same.

VI. Provided nevertheless, That no Person or Persons, who shall sell any Publick or Joint Stock, or other public Securities, to be delivered and paid for on a certain Day, and which shall be refused or neglected to be paid for, according to such Agreement, shall be obliged to transfer the same; but it shall and may be lawful for such Person or Persons to sell (5) such Stock or other Securities, which shall be so refused or neglected to be paid for, to any other Person or Persons for the best Price which can be obtained; and after such Sale, to receive

No. 1.
7 Geo. II. c. 8.

100l Penalty on giving or receiving Money to compound Differences relating to Stock not actually delivered.

Stock sold, and not paid for at the Time present, may be sold to any other Person

(4) The Protection hereby given to Persons making Discovery relates only to the Penalties imposed in this Section upon Acts prohibited by Section 1, and a Defendant is not compellable under Section 2 to answer to Matters which may subject him to Penalties under Sections 5 and 8.—*Bullock v. Richardson*, 11 Vesey, 373.

(5) No Action can be maintained upon this Section, unless the Stock is actually transferred.—A Contract of Sale at the Time when the Transfer Books are shut is not sufficient.—*Herkscher v. Gregory*, 4 East, 607.

No. 1.
7 Geo. II. c. 8.

(if the Parties can agree) or to recover, as aforesaid, from the Person or Persons who first contracted for the same, all the Damage which shall be sustained thereby.

Stock bought, and not transferred at the Time prefixed, the Buyer may purchase other Stock, and recover his Damage

VII. And provided also, That it shall and may be lawful to and for any Person or Persons, who shall buy any Publick or Joint Stock, or other publick Securities, to be accepted and paid for on a future Day, and which shall be refused or neglected to be transferred, to buy the like Quantity of such Stock, or other public Securities, of any other Person or Persons at the current Market Price, and to recover and receive, after such Purchase and Acceptance (if the Parties can agree) from the Person or Persons who first contracted to sell or deliver the same, the Damage which shall be sustained by Reason of the not delivering or not transferring such Stock or other Securities; any Thing in this Act, or any Law, Usage or Custom to the contrary notwithstanding.

500l. Penalty on buying or selling Stock, of which they are not actually possessed at the Time of the Contract.

VIII. And whereas it is a frequent and mischievous Practice for Persons to sell and dispose of Stocks, or other Securities, of which they are not possessed; Be it therefore further enacted by the Authority aforesaid, That all Contracts and Agreements whatsoever, which shall, from and after the said first Day of June, One Thousand Seven Hundred and Thirty-four, be made or entered into for the buying, selling, assigning, or transferring of any Publick or Joint Stock or Stocks, or other public Securities whatsoever, or of any Part, Share, or Interest therein, whereof the Person or Persons contracting or agreeing, or on whose Behalf the Contract or Agreement shall be made, to sell, assign, and transfer the same, shall not, at the Time of making such Contract or Agreement, be actually possessed of, or intitled unto, in his, her, or their own Right, or in his, her, or their own Name or Names, or in the Name or Names of a Trustee or Trustees to their Use, shall be null and void to all Intents and Purposes whatsoever: and all and every Person and Persons whatsoever, contracting or agreeing, or on whose Behalf, and with whose Consent, any Contract or Agreement shall be made, to sell, assign, or transfer any Publick or Joint Stock or Stocks, or other public Securities, whereof such Person or Persons shall not, at the Time of making such Contract or Agreement, be actually possessed of, or intitled unto, in his, her, or their own Name or Names, or in the Name or Names of a Trustee or Trustees, to their Use, or their own Right as aforesaid, shall forfeit and pay the Sum of five hundred Pounds, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at Westminster, in which no Essoin, Privilege, Protection, or Wager of Law, or more than one Imparllance, shall be allowed; one Moiety thereof to the Use of his Majesty, his Heirs and Successors, and the other Moiety thereof to the Use of him, her, or them who shall sue for the same; and all and every Broker or Brokers, Agent or Agents, who shall negotiate, transact, or intermeddle in the making or procuring to be made any such Contract or Agreement, as aforesaid, and shall know that the Person or Persons, by whom or on whose Behalf such Contract or Agreement shall be made, is or are not possessed of, or intitled unto, the Stock or Security, concerning which such Contract or Agreement shall be made, in his, her, or their own Name or Names, or in the Name or Names of a Trustee or Trustees for their Use or Right, shall, for every such Offence, forfeit and pay the Sum of one hundred Pounds, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at Westminster, in which no Essoin, Privilege, Protection, or Wager of Law, or more than one Imparllance, shall be allowed; one Moiety thereof to the Use of his Majesty, his Heirs and Successors, and the other Moiety thereof to the Use of him, her, or them who shall sue for the same.

100l. Penalty on Brokers negotiating such Contract.

IX. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *June*, One Thousand Seven Hundred and Thirty-four, all and every Broker or Brokers, or other Person or Persons, who shall negotiate or act as a Broker receiving Brokerage, in the buying, selling, or otherwise disposing of any of the said Public or Joint Stocks, or other public Securities, shall respectively keep a Book or Register, which shall be called *The Brokers Book*; in which said Book he and they shall fairly, justly, and truly enter all Contracts, Agreements and Bargains, that he or they shall from Time to Time make between any Person or Persons whatsoever, on the Day of the making such Contract or Agreement, together with the Names of the principal Parties, as well as Buyers as Sellers, and also the Day of making such Contract or Agreement, to the Intent and Purpose that such Broker or Brokers, and other Person or Persons acting or negotiating as such, as aforesaid, shall from Time to Time produce such such Book or Register, when thereunto lawfully required: And in case such Broker or Brokers, or any other who shall negotiate or act as a Broker, as aforesaid, in relation to any the said Matters, shall not keep such Book or Register, or who shall wilfully omit to enter therein, fairly, justly, and truly, any such Contract, Bargain and Agreement, as aforesaid, he or they shall, for every such Offence or Omission, forfeit and pay the Sum of fifty Pounds, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, in which no Essoin, Privilege, Protection, or Wager of Law, or more than one Imparlance, shall be allowed; one Moiety thereof to the Use of his Majesty, his Heirs and Successors, and other Moiety thereof to the Use of him, her, or them, who shall sue for the same.

No. 1.
7 Geo. II. c. 8.

All Contracts for Stock to be truly entered in the Brokers Book.

on Penalty of 50l.
for each Offence.

X. Provided always, That Nothing in this Act contained shall extend, or be construed to extend, to any Contracts or Agreements for the Purchase or Sale of any Stock, Annuities, or other public Securities, to be made with the Privy of the Accountant General of the Court of *Chancery*, in pursuance of any Decree or Order of the said Court; but that all such Contracts and Agreements may be made and performed in the same Manner as they might have been, if this Act had never been made.

Accountant of
the Chancery may
be as before.

XI. Provided also, and be it further enacted by the Authority aforesaid, That Nothing in this Act contained shall extend, or be construed to extend, to hinder or prevent any Person or Persons from lending any Sum or Sums of Money on any Public or Joint Stock or other public Securities whatsoever, or any Part, Share, or Interest therein, or to prevent or hinder any Defence, Contract, or Agreement, being made and entered into for the re-delivering, assigning, or transferring such Public or Joint Stock, or other public Securities, or any Part, Share, or Interest therein, upon the Repayment of the Sum or Sums of Money which shall have been lent and borrowed thereupon, with Interest for the same, so as no Premium or other Consideration whatsoever be paid to, or received by the Person or Persons lending such Money, for or in Consideration of such Loan, more than legal Interest.

This Act not
to hinder Persons
from lending Money
on Public
Stocks, or prevent
the re-delivering
thereof, on Re-
payment of the
Money lent.

XII. Provided also, and be it further enacted by the Authority aforesaid, That this present Act shall continue and be in Force from the said first Day of *June*, One Thousand Seven Hundred and Thirty-four, for the Term of Three Years, and from thence to the End of the then next Session of Parliament, and no longer.

This Act to be
in Force from 1st
June 1734, for 3
Years
Made perpetual
by 10 Geo. II. c. 8.

PART III. CLASS IX.

SALE OF OFFICES.

No. 1.

12 Richard II. c. 2.—None shall obtain Offices by Suit, or for Reward, but upon Desert.*

12 Ric II. c. 2.

ITEM it is accorded, That the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls, the Justices of the one Bench and of the other, Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of Peace, Sheriffs, Escheators, Custumers, Comptrollers, or any other Officer or Minister of the King, shall be firmly sworn, that they shall not ordain, name, or make Justice of Peace, Sheriff, Escheator, Customer, Comptroller, nor other Officer or Minister of the King, for any Gift or Brocade, Favour or Affection; (2) nor that none which pursueth by him, or by other, privily or openly, to be in any Manner Clerk, shall be put in the same Office, or in any other; (2) but that they make all such Officers and Ministers of the best and most lawful Men, and sufficient to their Estimation and Knowledge.

ITEM accordez est & assentuz que le Chancelier Tresorer Gardein du prive seal Seneschall del Hostel le Roi Chaumbreleynne du Roi Clerc des Roules Justices de lun Bank & de lautre Barons de Les cheker & toutz autres qi seront appellez dordeiner nomer ou faire Justices de la paix viscontz eschetours custumers contrerolours ou ascun autre officier ou ministre du Roi soient fermement jurrez & serementes qils nordeinent nament ne facent justice de la paix viscont eschetour custumer cantzerollour ne null autre officer ne ministre du Roi par null manere doun ne brocade favour naffection ne qe null qe pursue par luy ou par autre en prive ou en apert destre en ascune manere office soit mys en mesme loffice ou en ascun autre sanz qils facent toutz vielx officers & ministres de les plus bones et loialx et les plus sufficientz a lour escience et lour conscience.

*1 Coke speaks of this as a Law worthy to be written in Letters of Gold—but more worthy to be put in due Execution; for certainly never shall Justice be duly administered but when the Officers and Ministers of Justice be of such Quality, and come to their Places in such Manner, as by this Law is required.—1 Inst. 234.

No. 2.

No. 2.
5 & 6 Ed. VI.
c. 16.

5 & 6 Edward VI. c. 16.—Against Buying and Selling of Offices.

FOR the Avoiding of Corruption which may hereafter happen to be in the Officers and Ministers in those Courts, Places or Rooms, wherein there is requisite to be had the true Administration of Justice or Services of Trust; And to the Intent that Persons worthy and meet to be advanced to the Place where Justice is to be ministered, or any Service of Trust executed, should hereafter be preferred to the same, and no other:

5 & 6 Ed. VI.
c. 16.

The Penalty for
buying or selling
any Office or Of-
fices.

It Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons at any Time hereafter bargain or sell (1) any Office or Offices, or Deputation of any Office or Offices, or any Part or Parcel of any of them, or receive, have or take any Money, Fee, Reward, or any other Profit directly or indirectly, or take any Promise, Agreement, Covenant, Bond, or any Assurance to receive or have any Money, Fee, Reward or other Profit (2) directly or indirectly, for any Office or Offices, or for the Deputation of any Office or Offices or any Part of any of them; or to the Intent that any Person should have, exercise or enjoy any Office or Offices, or the Deputation of any Office or Offices or any Part of any of them; which Office or Offices, or any Part or Parcel of them, shall in any wise touch or concern the Administration or Execution of Justice, (3) or the Receipt, Control-

Job 75.
L. 1 Jac. 269.

(1) A Contract for A. to surrender an Office to the intent that B. may be appointed, is within the Act.—Co. Lit. 234, 3 Inst. 154, by the Name of Sir Arthur Ingram's Case

(2) A Bond from a Deputy to a Principal to pay him Half the Profits of the Office, is not within the Statute; nor a lesser Sum, Part of a Sum certain; nor a Sum out of the Fees;—but an Agreement generally to pay a Sum certain, when the Profits are uncertain, is void—Calleford v. De Cardonell, 2 Salk. 466—Amb. 358. Godolphin v. Tudor, 2 Salk 251—although it appear on the Record that the Profits received exceed the Sum stipulated to be paid—S. C. 6 Mod. 364, Willes 375, n.—Lockner v. Strode, 2 Ch. Cas. 38, which seems certain is misreported—see 2 H. B. 332. The same Distinction, as to a certain Profit, and a Profit out of the Fees of the Office, was allowed by Lord Nottingham, in Juxton v. Norris—cited 1 H. B. 332—misreported 2 Ch. 42.—A Bond to account for all the Profits to the Person appointing, is void within the Act—Laying v. Paine, Willes, 571—or to resign on request—S. C. So an Agreement to pay all the Profits to the Person by whose Interest the Affidavit was proved—Garforth v. Fearon, 1 H. B. 327.—A Demise of Part of the Profits of an Office, such as the Goods of Felons, to a Person appointed Deputy, rendering a certain Rent, is within the Act—semble Ellis v. Riddle, 2 Lev. 151—which went off on a collateral Ground. In Law v. Law, Temp. Talb. 140, an Injunction was granted against a Bond for procuring an Office in the Customs, the Lord Chancellor saying, that there was little Difference between a Commissioner's taking a Sum of Money, and another Person taking it to influence the Commissioner.—So Garforth v. Fearon, *id. sup.*

(3) The Act extends to Offices of Spiritual Courts, as Chancellor, Register, and Commissary—Dr. Tudor's Case—Cro. Jac. 269, S. C. by the Name of Robotham v. Tudor, Brownl. 11—Surregate, Juxton v. Morris, 2 Ch. Cas. 42—Archdeacon, Register, Woodward v. Fox, 3 Lev. 289—Laying v. Paine, Willes, 571.—The Office of Clerk of the Fines to a Justice in Wales,—Per Co. Walter v. Walter, Gower, 6, 180.—The Place of Gaoler—Stockwell v. North, Mo. 781—of Undersheriff—semble 1 Browning v. Hulford, 1 term. 19—(which went off on a Point of Pleading)—but this is expressly provided for

No. 2,
5 & 6 Ed. VI.
c. 16.

ment or Payment of any of the King's Highness Treasure, Money, Rent, Revenue, Account, Aulnage, Auditorship or Surveying of any of the King's Majesty's Honours, Castles, Manors, Lands, Tenements, Woods or Hereditaments; or any of the King's Majesty's Customs, or any other Administration or necessary Attendance to be had, done or executed in any of the King's Majesty's Custom House or Houses; or the keeping of any of the King's Majesty's Towns, Castles or Fortresses, being used, occupied or appointed for a Place of Strength and Defence; or which shall concern or touch any Clerkship to be occupied in any Manner of Court of Record, (4) wherein Justice is to be ministered: (5) That then all and every such Person and Persons that shall so bargain or sell any of the said Office or Offices, Deputation or Deputations, or that shall take any Money, Fee, Reward or Profit, for any of the said Office or Offices, Deputation or Deputations of any of the said Offices, or any Part of any of them, or that shall take any Promise, Covenant, Bond or Assurance for any Money, Reward or Profit, to be given for any of the said Office or Offices, Deputation or Deputations of any of the said Office or Offices, or any Part of any of them, shall not only lose and forfeit (6) all his and their Right, Interest and Estate which such Person or Persons shall then have, of, in or to any of the said Office or Offices, Deputation or Deputations, or any Part of any of them, or of, in or to the Gift or Nomination of any of the said Office or Offices, Deputation or Deputations, for the which Office or Offices, or for the Deputation or Deputations of which Office or Offices, or for any Part of any of them, any such Person or Persons shall to make any Bargain or Sale, or take or receive any Sum of Money, Fee, Reward or Profit, or any Promise, Covenant or Assurance to have or receive any Fee, Reward, Money or Profit: But also that all and every such Person or Persons, that shall give or pay any Sum of Money, Reward or Fee, or shall

by Stat. 3 Geo. I. c. 15, (with the Exceptions of the Sheriff of London,) and the Stewardship of a County. See *Williamson v. Burnley*, Brownlow, 70— not a Bailiff of a Hundred, 4 Leon. 33.

(3) The Office of Clerk of the Peace would seem to be clearly designated by this Description: but a particular Provision is made against the Sale of that Office, by Stat. W. & M. Sess. 1, c. 31, with a proviso, that the Act should not extend to the Clerk of the Peace for the County of Lancaster, who holds his Office for Lives.

(3) As to Offices not within the Act, and the Cases in which they may or may not be sold, or in which Contracts for their Resignation are or not valid, as depending upon such Contracts being allowed by the Authority of the proper Officers of Government, or otherwise, see *Parsons v. Thompson*, 115 B. 322, and the Authorities therein cited. See also *Blitchford v. Preston*, 8 T. R. in which a Contract for the Sale of the Command of an East India Ship, contrary to the By-laws of the Company, was ruled to be void. As to Officers in the Plantations, as affected by this Act, see *Blanchard v. Goldy*, 2 Salk. 111, *Davis v. Parley*, 4 Parley, 2 Mod. 45, 2 Keble. 26.—*Rex v. Vaughan*, 4 Bur.—but those Officers were expressly provided for in the next Number. As to the Offence of an Officer of State taking a Bribe, as of offering a Bribe for an Appointment to an Office.—See *Rex v. Vaughan*, *ub. sup.* A Person was convicted and imprisoned for such an offer to Mr. Addington when Prime Minister.

(4) In *Woodward v. Fox*, 5 Vent. 157, 257, an Archdeacon sold the Office of Registrar to a Person who held for his Life; and upon his Death, Appointments were made by the Archdeacon who had committed the Forfeiture, and the Bishop, and upon an Action of assumption to try the Right to the Office, it was held that the Forfeiture accrued to the Benefit of the King, and not to the Bishop; and that the King having made no Appointment, the Appointment by the Archdeacon was good.—The Court seemed to think that the King might appoint without Office being

make any Promise, Agreement, Bond or Assurance for any of the said Offices, or for the Deputation or Deputations of any of the said Office or Offices, or any Part of any of them, shall immediately by and upon the same Fee, Money or Reward given or paid, or upon any such Promise, Covenant, Bond or Agreement had or made for any Fee, Sum of Money or Reward to be paid as is aforesaid, be adjudged a disabled Person (7) in the Law, to all Intents and Purposes, to have, occupy or enjoy the said Office or Offices, Deputation or Deputations, or any Part of any of them, for the which such Person or Persons shall so give or pay any Sum of Money, Fee or Reward, or make any Promise, Covenant, Bond or other Assurance, to give or pay any Sum of Money, Fee or Reward.

No. 2.
5 & 6 Ed. VII
c. 16.

III. And be it also enacted by the Authority aforesaid, That all and every such Bargains, Sales, Promises, Bonds, Agreements, Covenants and Assurances as be before specified, shall be void, to and against him and them by whom any such Bargain, Sale, Bond, Promise, Covenant or Assurance shall be had or made. (8)

The Bargains & Assurances shall be void.
Cro. El. 529.
Stiles 29.

IV. Provided alway, That this Act, or any Thing therein contained, shall not in any wise extend to any Office or Offices, whereof any Person or Persons is or shall be seised of any Estate of Inheritance; (9) nor to any Office of Parkership, or of the keeping of any Park, House, Manor, Garden, Chase or Forest, or to any of them; any Thing in this Act heretofore mentioned to the contrary thereof in any wise notwithstanding.

To what Offices this Statute shall not extend.

V. Provided also, That if any Person or Persons do hereafter offend in any Thing contrary to the Tenor and Effect of this Act, yet that notwithstanding all Judgments given, and all other Act and Acts executed or done by any such Person or Persons so offending by Authority or Colour of the Office or Deputation which ought to be forfeited, or not occupied, or not enjoyed by the Person so offending as is aforesaid, after the said Offence so by such Person committed or done, and before such Person so offending for the same Offence be removed from the Exercise, Administration and Occupation of the said Office or Deputation, shall be and remain good and sufficient in Law to all Intents, Constructions and Purposes, in such like Manner and Form as the same should or ought to have remained and been if this Act had never been had or made.

Acts done by an Officer removable shall be good.

VI. Provided also, That this Act, or any Thing therein contained, shall not in any wise extend to any Bargain, Sale, Gift, Grant, Nomination, Bond, Covenant, Promise, Agreement or Assurance, whatsoever it be, of or for any the Office or Offices, Deputation or Deputations aforesaid, or any Part of any of them, had, made, done, concluded or agreed before the first Day of March next coming, but that the same Bargain, Sale, Gift, Grant, Nomination, Bond, Covenant, Promise, Agreement or Assurance had, made, done, concluded or agreed before the said first Day of March, shall always remain, continue and be in such Force, Strength and Effect, as if this Act had never been had or made; any Thing before in this Act mentioned to the contrary thereof in any wise notwithstanding.

A Bargain for an Office before the first Day of March &c.

(7) The Disability continues for life, and the King has no Power to dispense with it.—*Sir Arthur Ingram's Case*, 3 Inst. 154, Co. Lit. 234.

(8) An Obligation for the Performance of a Contract, void by the Statute, and for another Thing, is void for the whole.—*Smyth v. Colshill*, Anders, 53, S. C. by the Name of *Lee v. Colshill*, Cro. El. 529. As to an Action of Covenant lying upon such Covenants as are good, vi. S. C. 1 Anders, 107.

(9) The Bailiwick of the Savoy being an Office of Inheritance in the Crown, granted for Life or Years, and demised to a Sublessee, is not within the Statute.—*Ellis v. Ruddle*, 2 Lev. 151, *Nelson's Case*, Freem. 422.

No. 3.
5 & 6 Ed. VI.
c. 16.

Offices given by
the two Chief Jus-
tices or Justices of
Assize.

VII. Provided always, and be it enacted by the Authority afore-
said, That this Act, or any Thing therein contained, shall not in any
wise extend or be prejudicial or hurtful to any of the Chief Justices
of the King's Courts commonly called the King's Bench or Common
Place, or to any of the Justices of Assize that now be or hereafter
shall be, but that they and every of them, may do in every Behalf,
touching or concerning any Office or Offices to be given or granted by
them or any of them as they or any of them might have done before
the making of this Act; any Thing above mentioned to the contrary
in any wise notwithstanding.

No. 3.

49 George III. c. 126.—An Act for the further Preven-
tion of the Sale and Brokerage of Offices.

[20th June 1809.]

49 Geo. III. c. 126

Recital of st. 5 &
6, Ed. 6, c. 16.

WHEREAS an Act passed in the Fifth and Sixth Year of the
Reign of King Edward the Sixth, intituled, *Against buying
and selling of Offices*: And Whereas it was in and by the said Act
enacted, amongst other things, That if any Person or Persons at any
Time thereafter bargained or sold any Office or Offices, or Deputa-
tion of any Office or Offices, or any Part or Parcel of any of them,
or received, had, or took any Money, Fee, Reward, or any other
Profit, directly or indirectly, or took any Promise, Agreement, Cove-
nant, Bond, or any Assurance, to receive or have any Money,
Fee, Reward, or other Profit, directly or indirectly, for any Office
or Offices; or for the Deputation of any Office or Offices, or any
Part of any of them, or to the Intent that any Person should have,
exercise, or enjoy any Office or Offices, or the Deputation of any
Office or Offices, or any Part of any of them, which Office or Offices,
or any Part or Parcel of them, should in anywise touch or concern
the Administration or Execution of Justice, or the Receipt, Con-
trolment, or Payment of any of the King's Highness Treasure, Mo-
ney, Rent, Revenue, Account, Aduage, Auditorship, or survey-
ing of any of the King's Majesty's Honours, Castles, Manors, Lands,
Tenements, Woods, or Hereditaments, or any of the King's Majes-
ty's Customs, or any other Administration or necessary Attendance
to be had, done, or executed in any of the King's Majesty's Custom
House or Houses, or the keeping of any of the King's Majesty's
Towns, Castles, or Fortresses, being used, occupied, or appointed
for Places of Strength and Defence, or which should concern or
touch any Clerkship to be occupied in any Manner of Court of Re-
cord, wherein Justice was to be administered, that then all and every
such Person and Persons that should so bargain or sell any of the
Office or Offices, Deputation or Deputations, or that should take
any Money, Fee, Reward, or Profit for any of the said Office or
Offices, Deputation or Deputations of any of the said Offices, or
any Part of any of them, or that should take any Promise, Cove-
nant, Bond, or Assurance for any Money, Reward, or Profit to be
given for any of the said Office or Offices, Deputation or Deputa-
tions of any of the said Office or Offices, or any Part of any of
them, should not only lose and forfeit all his and their Right, Inter-
est, and Estate which such Person or Persons should then have, of,
in, or to, any of the said Office or Offices, Deputation or Deputa-
tions or any Part of any of them, or of, in, or to, the Gift or Nomina-
tion of any of the said Office or Offices, Deputation or Deputations

* for the which Office or Offices, or for the Deputation or Deputations
 * of which Offices, or for any Part of any of them, any such Person or No. 8.
 * Persons should so make any Bargain or Sale. or take or receive any 49 G. III. c. 126.
 * Sum of Money, Fee, Reward, or Profit, or any Promise, Covenant,
 * or Assurance to have or receive any Fee, Reward, Money, or Profit,
 * but also that all and every such Person or Persons that should give or
 * pay any Sum of Money, Reward, or Fee, or should make any Prom-
 * ise, Agreement, Bond, or Assurance for any of the said Offices, or
 * for the Deputation or Deputations of any of the said Office or Offices,
 * or any Part of any of them, should immediately by and upon the
 * same Fee, Money, or Reward given or paid, or upon any such Prom-
 * ise, Covenant, Bond, or Agreement had or made for any Fee, Sum
 * of Money, or Reward, to be paid as is aforesaid, be adjudged a dis-
 * abled Person in the Law to all Intents and Purposes, to have, occupy,
 * or enjoy the said Office or Offices, Deputation or Deputations, or
 * any Part of any of them, for the which such Person or Persons
 * should so give, or pay any Sum of Money, Fee, or Reward, or make
 * any Promise, Covenant, Bond, or other Assurance, to give or pay
 * any Sum of Money, Fee, or Reward; and that all and every such
 * Bargains, Sales, Promises, Bonds, Agreements, Covenants, and
 * Assurances as before specified should be void to and against him and
 * them by whom any such Bargain, Sale, Bond, Promise, Covenant,
 * or Assurance should be had or made: And Whereas it was in the
 * said Act provided, that the said Act, or any Thing therein contained,
 * should not in anywise extend to any Office or Offices, whereof any
 * Person or Persons was or should be seized of any Estate of Inheri-
 * tance, nor to any Office of Parkership, or of the keeping of any Park,
 * House, Manor, Garden, Chase, or Forest, or to any of them; And
 * Whereas it was by the said Act further provided, that if any Person
 * or Persons did thereafter offend in any Thing contrary to the Tenor
 * and Effect of the said Act, yet that notwithstanding all Judgments
 * given, and all other Act and Acts executed or done by any such Per-
 * son or Persons so offending by Authority or Colour of the Office or
 * Deputation which ought to be forfeited or not occupied or not en-
 * joyed by the Person so offending, after the said Offence so by such Per-
 * son committed or done, and before such Person so offending for the
 * same Offence should be removed from the Exercise, Administration,
 * and Occupation of the said Office or Deputation, should be and re-
 * main good and sufficient in Law, to all Intents, Constructions, and
 * Purposes, in such like Manner and Form as the same would or ought
 * to have remained and been if this Act had never been had or made;
 * And whereas it was by the said Act further provided, that the said
 * Act, or any Thing therein contained, should not in anywise extend,
 * or be prejudicial or hurtful to any of the Chief Justices of the King's
 * Courts, commonly called the King's Bench or Common Place, or to
 * any of the Justices of Assize, that then were or thereafter should be,
 * but that they and every of them might do in every Behalf touching
 * or concerning any Office or Offices to be given or granted by them
 * or any of them, as they or any of them might have done before the
 * making of the said Act: Be it therefore declared and enacted by the
 * King's most Excellent Majesty, by and with the Advice and Consent
 * of the Lords Spiritual and Temporal, and Commons, in this present
 * Parliament assembled, and by the Authority of the same, That from
 * and after the passing of this Act, the said Act and all the Provisions
 * therein contained shall extend and be construed to extend to *Scotland*
 * and *Ireland*, and to all Offices in the Gift of the Crown, or of any
 * Office appointed by the Crown, and all Commissions Civil, Naval, or
 * Military, and to all Places and Employments, and to all Deputations
 * to any such Offices, Commissions, Places, or Employments in the

Provisions of said
 Act, 5 and 6 1 d.
 6, c 16, extended to
 Scotland and
 Ireland and to all
 Offices in the Gift
 of the Crown, &c.

No. 3.
49 G. III. c. 126.

respective Departments or Offices, or under the Appointment or Superintendence and Controul of the Lord High Treasurer or Commissioners of the Treasury, the Secretary of State, the Lords Commissioners for executing the Office of Lord High Admiral, the Master General and principal Officers of His Majesty's Ordnance, the Commander in Chief, the Secretary at War, the Paymaster General of His Majesty's Forces, the Commissioners for the Affairs of India, the Commissioners of the Excise, the Treasurer of the Navy, the Commissioners of the Navy, the Commissioners for Victualling, the Commissioners of Iran ports, the Commissary General, the Storekeeper General, and also the principal Officers of any other publick Department or Office of His Majesty's Government in any Part of the United Kingdom, or in any of His Majesty's Dominions, Colonies, or Plantations which now belong or may hereafter belong to His Majesty, and also to all Offices, Commissions, Places and Employments belonging to or under the Appointment or Controul of the United Company of Merchants of *England* trading to the *East Indies*, in as full and ample a Manner as if the Provisions of the said Act were repeated as to all such Offices, Commissions, Places, and Employments, and made Part of this Act; and the said Act and this Act, and all the Clauses and Provisions therein respectively contained, shall be construed as one Act, as if the same had been herein repeated and re-enacted.

When Right of Appointment is forfeited Office voided in His Majesty.

II. Provided always, and be it further enacted, That where the Right, Estate, or Interest of any Person or Persons shall be forfeited under any of the Provisions of the said Act or this Act, the Right of such Appointment shall immediately vest in and belong to His Majesty, his Heirs and Successors.

Persons buying or selling or receiving or paying Money without the due Office, penalty of Misdeemeanor.

III. And be it further declared and enacted, That from and after the passing of this Act, if any Person or Persons shall sell or bargain for the Sale of, or receive, have, or take any Money, Fee, Gratuity, Loan of Money, Reward, or Profit, directly or indirectly, or any Promise, Agreement, Covenant, Contract, Bond, or Assurance, or shall by any Way, Device or Means, contract or agree to receive or have any Money, Fee, Gratuity, Loan of Money, Reward or Profit, directly or indirectly, and also if any Person or Persons shall purchase or bargain for the Purchase of, or give or pay any Money, Fee, Gratuity, Loan of Money, Reward or Profit, or make or enter into any Promise, Agreement, Covenant, Contract, Bond or Assurance to give or pay any Money, Fee, Gratuity, Loan of Money, Reward or Profit, or shall by any Way, Means, or Device, contract or agree to give or pay any Money, Fee, Gratuity, Loan of Money, Reward or Profit, directly or indirectly, for any Office, Commission, Place or Employment specified or described in the said recited Act or this Act, or within the true Intent or Meaning of the said Act, or this Act, or for any Deputation thereto, or for any Part, Parcel, or Participation of the Profit thereof, or for any Appointment or Nomination thereto or Resignation thereof, or for the Consent or Consents, or Voice or Voices of any Person or Persons to any such Appointment, Nomination or Resignation, then and in every such Case, every such Person, and also every Person who shall wilfully and knowingly aid, abet or assist such Person therein, shall be deemed and adjudged guilty of a Misdeemeanor.

Persons receiving or paying Money for soliciting out of the Office, and any Negotiations or extended Rewards, not guilty of Misdeemeanor.

IV. And be it further enacted, That from and after the passing of this Act, if any Person or Persons shall receive, have, or take any Money, Fee, Reward or Profit, directly or indirectly, or take any Promise, Agreement, Covenant, Contract, Bond, or Assurance, or by any Way, Means, or Device, contract or agree to receive or have any Money, Fee, Gratuity, Loan of Money, Reward or Profit, directly or indirectly, for any Interest, Solicitation, Petition, Request, Recomi-

mentation, or Negotiation whatever, made or to be made, or pretended to be made, or under any Pretence of making or causing or procuring to be made any Interest, Solicitation, Petition, Request, Recommendation or Negotiation, in or about or in anywise touching, concerning, or relating to any Nomination, Appointment, or Deputation to, or Resignation of any such Office, Commission, Place or Employment as aforesaid, or under any Pretence for using or having used any Interest, Solicitation, Petition, Request, Recommendation or Negotiation, in or about any such Nomination, Appointment, Deputation or Resignation, or for the obtaining or having obtained the Consent or Consents, or Voice or Voices of any Person or Persons as aforesaid to such Nomination, Appointment, Deputation or Resignation; and also if any Person or Persons shall give, or pay, or cause or procure to be given or paid any Money, Fee, Gratuity, Loan of Money, Reward or Profit, or make, or cause, or procure to be made any Promise, Agreement, Covenant, Contract, Bond or Assurance, or by any Way, Means, or Device, contract or agree or give or pay or cause or procure to be given or paid any Money, Fee, Gratuity, Loan of Money, Reward or Profit for any Solicitation, Petition, Request, Recommendation or Negotiation whatever, made or to be made, that shall in anywise touch, concern, or relate to any Nomination, Appointment, or Deputation to or Resignation of any such Office, Commission, Place, or Employment as aforesaid, or for the obtaining or having obtained, directly or indirectly, the Consent or Consents, or Voice or Voices of any Person or Persons as aforesaid to any such Nomination, Appointment, Deputation, or Resignation; and also if any Person or Persons shall, for or in expectation of Gain, Fee, Gratuity, Loan of Money, Reward, or Profit, solicit, recommend, or negotiate in any Manner for any Person or Persons in any Matter that shall in anywise touch, concern, or relate to any such Nomination, Appointment, Deputation or Resignation aforesaid, or for the obtaining, directly or indirectly, the Consent or Consents or Voice or Voices of any Person or Persons to any such Nomination, Appointment, or Deputation or Resignation aforesaid, then and every such Case every such Person, and also every Person who shall wilfully and knowingly aid, abet, or assist such Person therein, shall be deemed and adjudged guilty of a Misdemeanor.

V. And Whereas on the Pretence of negotiating or soliciting the Sale, Transfer, or Appointment of any Office or Offices which under the Exception of this Act or otherwise it may be lawful to sell, Offices for negotiating the same, and Advertisements may be published, by Means and under the Colour of which illegal Transactions intended to be prohibited by this Act may be carried on, Be it therefore further enacted, That from and after the passing of this Act, if any Person or Persons shall open or keep any House, Room, Office, or Place for the soliciting, transacting or negotiating in any Manner whatever any Business relating to Vacancies in, or the Sale or Purchase of, or Appointment, Nomination, or Deputation to, or Resignation, Transfer, or Exchange of any Offices, Commissions, Places, or Employments whatever in or under any Publick Department, then and in every such Case every such Person, and also every Person who shall wilfully and knowingly aid, abet, or assist therein, shall be deemed and adjudged guilty of a Misdemeanor.

VI. And be it further enacted, That if any Person or Persons shall advertise or publish, or cause or procure to be advertised or in any Manner published any House, Room, Office, or Place to have been or to be opened, set up, or kept for any of the Purposes aforesaid, or advertise or publish, or cause or procure to be advertised or published, the Name or Names of any Person or Persons as Broker or

No. 3.

49 G. III. c. 126.

Persons opening
or advertising
Houses for trans-
acting Business re-
lating to Sale of
Offices, guilty of a
Misdemeanor.

Penalty on Per-
sons advertising or
publishing the
Names of Brokers
or Agents, 50s.

No. 3.
4) G. III. c. 122.

Brokers, Agent or Agents, Solicitor or Solicitors for any of the Purposes aforesaid, or print or cause or procure or permit or suffer to be printed or advertised any Advertisement or Advertisements, Proposal or Proposals for any of the Purposes aforesaid, then and in such Case such Person or Persons shall forfeit for every such Offence the Sum of Fifty Pounds, to be sued for, levied, or recovered in any of His Majesty's Courts of Record at Westminster, as to all Offences committed in England, or at Dublin as to Offences committed in Ireland, or in His Majesty's Courts in Scotland as to Offences committed in Scotland respectively, and the whole of every such Penalty shall go to the Person who shall sue for the same, with full Costs of Suit.

Exception as to Purchase or Sale of certain Offices in the Public, or Commissions in the Army at the regulated Price, and authorized Regimental Agents acting without Lic.

VII. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend to any Purchases, Sales, or Exchanges of any Commissions or Appointments in the honourable Band of Gentlemen Pensioners, or in His Majesty's Yeoman Guard, or in the Marshalsea, and the Court of the King of the Palace of the King at Westminster, or to extend to any Purchases, Sales, or Exchanges of any Commissions in His Majesty's Forces for such Prices as shall be regulated and fixed by any Regulation made or to be made by His Majesty in that Behalf, or to any Act or Thing done in relation thereto, by any Agents, provided that such Agents shall be Agents of Regiments authorized by the Commander in Chief of His Majesty's Forces, or by the Colonels or Commandants of Regiments or Corps, and shall act therein under such Regulations only as are or shall from Time to Time be established by His Majesty, and shall not cause or procure, or knowingly permit or suffer to be printed or advertised, any Advertisement or Advertisements, Proposal or Proposals for any Purchase or Sale or Exchange of any Commission, or any Negotiation relating thereto, and shall not receive or take any Money, Fee, Gratuity, or Reward, or any Promise, Agreement, Covenant, Contract, Bond, or Assurance, or by any Way, Means, or Device, contract or agree to receive or have any Money, Fee, Gratuity, or Reward, for acting in such Behalf.

Officers in Army suing more than regulated Price or pay Agents for neglect, shall forfeit their Commissions, and be cashiered, their Commissions be sold Half of the Produce (not exceeding 500*l*.) to the Informer. &c.

VIII. Provided also, and be it further enacted, That every Officer in His Majesty's Forces, who shall take, accept, or receive, or pay, or agree to pay, any larger Sum of Money, directly or indirectly, than what is allowed by any Regulations made by His Majesty in relation to the Purchase, Sale, or Exchange of Commissions in His Majesty's Forces, or who shall pay, or cause to be paid, any Sum of Money, to any Agent or Broker, or other Person, for negotiating the Purchase or Sale or Exchange of any such Commission, shall, on being convicted thereof by a General Court Martial, forfeit his Commission, and be cashiered, and as an Encouragement for the Detection of such Practices, such Commission so forfeited shall be sold, and Half the regulated Value (not exceeding Five Hundred Pounds) shall be paid to the Informer, and the other Half, or the Remainder, if more than Five Hundred Pounds, shall go and be applied as his Majesty shall order and direct, by any Regulations from Time to Time made in that Behalf. Provided also, that every Person who shall sell his Commission in His Majesty's Forces, and not continue to hold any Commission in His Majesty's Forces, shall, upon or in relation to such Sale, take, accept, or receive, directly or indirectly, any Money, Fee, Gratuity, Loan of Money, Reward, or Profit, or any Promise, Agreement, Covenant, Contract, Bond, or Assurance, or shall by any Device or Means contract or agree to receive or have any Money, Fee, Gratuity, Loan of Money, Reward or Profit, beyond the regulated Price or Value of the Commission sold, and also every Person who shall wilfully or knowingly aid, abet, or assist such Person therein, shall be deemed and adjudged guilty of a Misdemeanor within the Provisions of this Act.

IX. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to any Office excepted from the Provisions of the said Act passed in the Sixth Year of the Reign of King EDWARD the Sixth against buying and selling of Offices, or to any Office which was legally saleable before the passing of this Act, and to the Gift of any Person by Virtue of any Office of which such Person is or shall be possessed under any Patent or Appointment for his Life, or to render invalid, or in any Manner to affect any Promise, Agreement, Covenant, Contract, Bond, Assurance, or Trust, entered into or declared before the passing of this Act, and which before the passing thereof was a valid Promise, Agreement, Covenant, Contract, Bond, Assurance, or Trust, in Law or Equity, or to any Money paid, or to any Act, Matter, or Thing done in pursuance of any such Promise, Agreement, Covenant, Contract, Bond, or Assurance.

No 3.

49 G. III. c. 126.

Exceptions as to
Offices excepted in
former Act, and
Offices legally sale-
able, &c.

X. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to prevent or make void any Deputation to any Office, in any Case in which it is lawful to appoint a Deputy, or any Agreement, Contract, Bond, or Assurance lawfully made in respect of any Allowance, Salary, or Payment made or agreed to be made by or to such Principal or Deputy respectively, out of the Fees or Profits of such Office.

Sum of lawful
Deputations and
Payments out of
the Fees.

XI. Provided also, and be it further enacted, That nothing in the said Act or in this Act contained shall extend to any annual Reservation, Charge, or Payment made or required to be made out of the Fees, Perquisites, or Profits of any Office to any Person who shall have held such Office, in any Commission or Appointment of any Person succeeding to such Office, or to any Agreement, Contract, Bond, or other Assurance made for securing such Reservation, Charge, or Payment: Provided always, that the Amount of such Reservation, Charge, or Payment, and the Circumstances and Reasons under which the same shall have been permitted, shall be stated in the Commission, Patent, Warrant, or Instrument of Appointment of the Person so succeeding to and holding such Office, and paying or securing such Money as aforesaid.

Exception as to
annual Payments
out of the Fees to
any Person formerly
holding the
Office.

XII. And whereas the Parliament of Ireland never enacted any Provisions similar to those contained in the said recited Act of the Fifth and Sixth Years of King EDWARD the Sixth: And whereas it hath always been customary in the Appointment of the Masters and Six Clerks, and First and Second Examiners of the Court of Chancery in Ireland, to allow the having and receiving of Money, or other valuable Consideration for those Appointments; and although it may be fit and proper that the said Custom should be abolished, yet it is reasonable that the several and respective Persons who now hold the said Offices should be permitted to dispose of the same in like Manner as hath been heretofore done: Be it therefore enacted, That it shall and may be lawful for the said Masters and Six Clerks, and First and Second Examiner or any of them, (save and except *George Ellis* Esquire, one of the Masters of the said Court,) so to proceed touching the Disposition and Appointment of their said Offices respectively, in such and the like Manner, to all Intents and Purposes, as hath been heretofore accustomed, but that from and after the Death, Resignation, or Removal of each of them, and the actual Appointment of any Person in the Stead of the Persons so dying, resigning, or being removed, the Powers and Provisions of the said recited Act and of this Act shall be applicable and shall be applied to the said respective Offices in the said Court of Chancery in Ireland.

Exception as to
Masters, Six Clerks,
and Examiners of
the Chancery in
Ireland, till after
the Death, &c. of
the present Pos-
sessions.

XIII. Provided always, and be it enacted, That every Person who shall commit, in Scotland, any Offence against this Act, which by the

Punishment of
Misdemeanors in
Scotland.

No. 3.
49 G. III. c. 125

Offences committed
abroad shall be
tried in King's
Bench, under 48
Geo. 3, c. 83.

Provisions of the same is constituted a Misdemeanor, shall be liable to be punished by Fine and Imprisonment, or by the one or the other of such Punishments as the Judge or Judges before whom such Offence shall be tried and convicted may direct.

XIV. And be it further enacted, That all Offences committed against the Provisions of the said recited Act and this Act, by any Governor, Lieutenant Governors, or Person having the chief Command, Civil or Military, in any of His Majesty's Dominions, Colonies, or Plantations, or his or their Secretary or Secretaries, may and shall be prosecuted and enquired of, and heard and determined in His Majesty's Court of King's Bench at *Westminster*, in like Manner as any Crime, Offence, or Misdemeanor committed by any Person holding a publick Employment abroad, may be prosecuted and enquired of under the Provisions of an Act passed in the Forty-second Year of the Reign of his present Majesty, intituled, *An Act for the trying and punishing in Great Britain Persons holding public Employments, for Offences committed abroad; and for extending the Provisions of an Act passed in the Twenty first Year of the Reign of King JAMES, made for the Ease of Justices and others in pleading in Suits brought against them, to all Persons either in or out of this Kingdom, authorized to commit to safe Custody*

Commencement
of the Act in cer-
tain Places abroad.

XV. Provided always, and be it further enacted, That nothing in the said recited Act or this Act contained shall extend or be construed to extend to *Gibraltar, Malta*, or any Place or Places in the *Mediterranean*, until Three Months; or to any of His Majesty's Dominions, Colonies, or Plantations in *America* or the *West Indies*, until Four Months; or to the *Cape of Good Hope*, the Island of *Saint Helena*, or any Part of *Africa*, until Six Months; or to any of His Majesty's Dominions in the *East Indies* or beyond the *Cape of Good Hope*, until Twelve Months, after the passing of this Act.

No. 4.

53 George III. c. 54.—An Act to amend an Act made in the Forty-ninth Year of His Majesty's Reign, intituled, *An Act for the further Prevention of the Sale and Brokerage of Offices.*

53 Geo. III. c. 54.
49 Geo. III. c. 125
Sec. 7.

WHEREAS an Act was passed in the Forty-ninth Year of His Majesty's Reign, intituled *An Act for the further Prevention of the Sale and Brokerage of Offices*: And whereas it was by the said Act, amongst other Things, provided, that nothing therein contained should extend or be construed to extend to any Purchases, Sales or Exchanges of any Commissions or Appointments in His Majesty's Yeoman Guard: And whereas no mention is made in said Act of His Majesty's Battle Axe Guards in *Ireland*, and it is reasonable that the said Battle Axe Guards should be also excepted from the Operation of the said Act; Be it therefore enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That nothing in the said Act contained, for preventing the Purchase, Sale, Exchange or Brokerage of Offices, shall extend or be construed to extend to any Purchases, Sales or Exchanges of any Commissions or Appointments in His Majesty's Battle Axe Guards in *Ireland*; any Thing in the said Act contained to the contrary in any wise notwithstanding.

Not to extend to
His Majesty's Bat-
tle Axe Guards in
Ireland.

PART III. CLASS X.

BUYING OF TITLES.

No. 1.

3 Edward I. c. 25.—None shall commit Champerty, to have Part of the Thing in Question.

NULLE Ministre le Roi ne maintene per lui, ne per autre, les plees, paroles, ou busoignes, qe sount en la Court le Roi, des terres, tenementz, ou des autres choses, pur aver part de ceo, ou autre profit per covenant fait; & qi le fray, soit puny a la volonte le Roi.

NO Officer of the King by themselves, nor by other, shall maintain Pleas, Suits, or Matters hanging in the King's Courts, for Lands, Tenements, or other Things, for to have Part or Profit thereof by Covenant made between them; and he that doth, shall be punished at the King's Pleasure.

3 Edw. I. c.
9 H. 7. 18.
15 H. 7. 4.
Regist. 128.
Rast. 119.
2 Inst. 297.

No. 2.

13 Edward I. c. 49.—The Penalty for buying the Title of Land depending in Suit. A Remedy for Suits where the Law faileth.

Ex Cotton MS. Verspas. B. 7. fol. 39.

LE Chancelier Tresorer ne Justice ne null Conseil le Roy ne clerke del Eschequier ne de Justice ne de autre Ministre ne null del hostiel le Roy clerke ne lay ne puisse rescievre esglise ne avouison de esglise ne terre ne tenement nen fee ne par dons ne par achat ne a ferme ne a champert ne en autre manere tant come la chose est en plee devant le Roy ou devant nul de ces Ministres ne nul lower nen soit pris et qe contra cestex choses face ou per luy ou per autre ou nul bargain face soit puny a la volonte le Roy auxilien celluy qe le purchacera coms celluy qi le fra.

THE Chancellor, Treasurer, Justices, nor any of the King's Counsel, no Clerk of the Chancery, nor of the Exchequer, nor of any Justice or other Officer, nor any of the King's House, Clerk ne Lay, shall not receive any Church, nor Advowson of a Church, Land, nor Tenement in Fee, by Gift, nor by Purchase, nor to Farm, nor by Champerty, nor otherwise, so long as the Thing is in Plea before us, or before any of our Officers; (2) nor shall take no Reward thereof. (3) And he that doth contrary to this Act, either himself, or by another, or make any Bargain, shall be punished at the King's Pleasure, as well he that purchaseth, as he that doth sell.

13 Edw. I. c. 49.
Pitz. Champerty,
1, 5, 6, 8, 12, 14,
15
Hob. 117.
1 Ed. I. c. 25
Regist. 128, 129
Rast. 119.

No. 3.

38 Henry VIII. c. 9.—The Bill of Bracery and buying of Titles.*

38 H. VIII. c. 9.
7 Roll. 447.
4 Mod. 84.
Savil 42.
1 Leon. 166,
208.
2 Leon. 39, 48
Co. pl. f. 258.
364. Moor 266,
pl. 414.
3 Leon. 233.

THE King our Sovereign Lord, calling to his most blessed Remembrance, that there is nothing within this Realm that conserveth his loving Subjects in more Quietness, Rest, Peace and good Concord, than the due and just Ministration of his Laws, and the true and indifferent Trials of such Titles and Issues, as been to be tried according to the Laws of this Realm, which his most Royal Majesty perceiveth to be greatly hindered and letted by Maintenance, Embracery, Champerty, Subornation of Witnesses, sinister Labour, Buying of Titles and pretended Rights of Persons not being in Possession, whereupon great Perjury hath ensued, and much Iniquity, Oppression, Vexation, Troubles, Wrongs and Disinheritance hath followed among his most loving Subjects, to the great Dis-

* The Doctrines of Maintenance, Champerty, and buying of Titles, are become, in a great Measure, obsolete, as Matter of criminal Law, and very seldom come into Notice as affecting the Validity of Contracts.—In *Sharp v. Carter*, 3 P. Wms. 375, and *Hitchen v. Lawler*, Cooper 34, Pleas of the Statute were allowed against Discoveries which might tend to subject the Parties to the Penalties thereby imposed. In *Wall v. Scrubbs*, 2 V. and B. 354, the Defendant to a Bill for specific Performance pleaded the Statute, and that the Plaintiff, or those under whom he claimed, had not been in Possession for a Year, &c. (following the Statute) which Plea was disallowed on Account of not being put in on Oath. In the same Case it was afterwards inserted by Way of Answer, that as the Vendor was himself only intitled to the Estate by Virtue of an Agreement with the Persons of whom he had purchased it, and no Conveyance had been made to him, or Possession taken, the Statute 38 Henry VIII. applied. But the Case being decided in Favour of the Defendant on another Ground, it became unnecessary to consider the Objection arising out of the Statute.

It would certainly seem a Perversion of the Law to consider a Case as falling within the Statute upon the mere Ground of the Objection taken in the preceding Case, where the Possession was consistent with the Vendor's Title, and the only Defect was in the Conveyance of the legal Estate, of which the first Vendor was, in the Contemplation of Courts of Equity, a Trustee for his Vendee, the second Vendor, and was the Person under whom such Vendor claimed.

In *Underwood v. Lord Courtown*, 2 S. and L. Lord Redesdale said, "A Person out of Possession cannot in Law convey anything to a Stranger; he can give only a Release to one in Possession, and the Law has wisely provided this in Order to quiet Possessions." From the early Statutes which I have thought it eligible to introduce, it appears that the Law upon this Subject was originally instituted upon the most Wise and Salutary Principles, and as a Guard against that judicial Corruption, the Prevalence of which is rendered most apparent by the numerous Provisions instituted against it. Whether there is equal Necessity for continuing such a Law in the existing State of the Community is a Question which may admit of a very different Consideration.—The Possession which has the Benefit of the Protection of the Law is, by the very Supposition of the Case, a Possession founded in Wrong, and the practical Effect of prohibiting any Contract with Relation to the Right which is withheld, is to render that Right nugatory and unavailing, unless the Party in whom it is vested has in his own Hands the Means of resorting to legal Remedies for its Infraction.—A further Effect is, that such Rights can only pass by Operation of Law and cannot be affected by any testamentary or other Disposition.—See some very judicious Observations on the Law of Champerty in Bentham's Defence of Usury.

See also the Observations of Mr. Justice Buller, in *Master v. Miller*, 4 T. R. 320, and of Lord Chief Justice Mansfield, in *Goodright v. Forrester*, 1 Taunt. 376, and Note to Statute 38 Henry 8. c. 1, ante Part II. Class XI. No. 1.

' pleasure of Almighty God, the Discontentation of his Majesty, and to the great Hindrance and Let of Justice within this his Realm.' For the avoiding of all which Misdemeanors, and buying of Titles, and pretended Rights, and to the Intent that Justice may be more fully and indifferently ministred, and the Truth in Causes of Contention plainly tried between his Subjects of this Realm; Be it enacted by our said Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That from henceforth all Statutes heretofore made concerning Maintenance, Champerty and Embracery, or any of them, now standing and being in their full Strength and Force, shall be put in due Execution, according to the Tenures and Effects of the same Statutes.

II. And over that, be it further enacted by the Authority aforesaid, That no Person nor Persons, of what Estate, Degree or Condition soever he or they be, shall from henceforth bargain, buy, or sell, or by any Ways or Means obtain, get or have any pretended Rights or Titles, or take Promise, Grant or Covenant to have any Right or Title of any Person or Persons, in or to any Manors, Lands, Tenements or Hereditaments (except such Person or Persons, which shall so bargain, sell, give, grant, covenant or promise the same, their Antecessors, or they by whom he or they claim the same, have been in Possession of the same, or of the Reversion or Remainder thereof, or taken the Rents or Profits thereof, by the Space of one whole Year next before the said Bargain, Covenant, Grant or Promise made) upon Pain that he that shall make any such Bargain, Sale, Promise, Covenant or Grant, to forfeit the whole Value of the Lands, Tenements or Hereditaments, so bargained, sold, promised, covenanted or granted, contrary to the Form of this Act; And the Buyer and Taker thereof, knowing the same, to forfeit also the Value of the said Lands, Tenements or Hereditaments so by him bought or taken as is abovesaid; the one Half of the said Forfeitures to be to the King our Sovereign Lord, and the other Half to the Party that will sue for the same in any of the King's Courts of Record, by Action of Debt, Bill, Plaint or Information; in which Action, Bill, Plaint or Information, no Essoin, Protection, Wager of Law, nor Injunction shall be allowed.

III. And furthermore, That no manner of Person or Persons, of what Estate, Degree or Condition soever he or they be, do hereafter unlawfully maintain, or cause, or procure any unlawful Maintenance in any Action, Demand, Suit or Complaint in any of the King's Courts of the Chancery, the Star-Chamber, *Whitehall*, or elsewhere within any of the King's Dominions of *England* and *Wales*, or the Marches of the same, where any Person or Persons have or hereafter shall have Authority, by Virtue of the King's Commission, Patent or Writ, to hold Plea of Lands, or to examine, hear or determine any Title of Lands, or any Matter or Witnesses concerning the Title, Right or Interest of any Lands, Tenements or Hereditaments; and that no Person nor Persons, of what Estate, Degree or Condition soever he or they be, do hereafter unlawfully retain, for Maintenance of any Suit or Plea, any Person or Persons, or embrace any Freeholders or Jurors, or suborn any Witness, by Letters, Rewards, Promises, or any other sinister Labour or Means, for to maintain any Matter or Cause, or to the Disturbance or Hindrance of Justice, or to the Procurement or Occasion of any manner of Perjury, by false Verdict or otherwise, in any manner of Courts aforesaid, upon Pain to forfeit for every such Offence x. li. the one Moiety thereof unto the King our Sovereign Lord, and the other Moiety to him that will sue for the same by Action of Debt, Bill, Plaint, or Information in any of the King's Courts; in which Action, no Essoin, Protection, Wager of Law, nor Injunction shall be allowed.

No. 3.
32 Hen. VIII. c. 9.
Hob. 113.
Godb. 430.
Goldsb. 101. pl.
6. Hetley 164.
Dyer 74.
4 Co. 26.
Bro. Maintenance 38.
Cro. El. 257.
Cro. Car. 43.
1 Anders. 76,
78, 201.

Unlawful Maintaining of a Suit depending in any of the King's Courts.
Goldsb. 113.
pl. 1 Rast. pl. f.
The Penalty enlarged to 40l. by 5 El. c. 9 § 2.
Bro. Maintenance, 1, 3, 5, 6, 7, 8, 9, 14.

No. 3.
32 Hen. VIII. c. 9

Purchasing of a
pretended Title by
him that is in Pos-
session is lawful.
Dyer 53.

IV. Provided alway, and be it enacted by the Authority aforesaid, That it shall be lawful to any Person or Persons being in lawful Possession by taking of the yearly Farm, Rents or Profits, of or for any Manors, Lands, Tenements or Hereditaments, to buy, obtain, get or have, by any reasonable Ways or Means, the pretended Right or Title of any other Person or Persons, hereafter to be made to, of, or in such Manors, Lands, Tenements or Hereditaments, whereof he or they shall so be in lawful Possession; any Thing in this Act contained to the contrary notwithstanding.

Proclamation of
the Statutes of
Maintenance,
Champery, &c.
shall be made at
the Assizes

V. And for the due Execution of this present Act, be it further enacted by Authority aforesaid, That the Justices of Assize of every Circuit within this Realm, and elsewhere within the King's Dominions, shall in every County within their Circuits, two Times in the Year, that is to say, in the Time of their Sitings for the taking of Assizes or Delivery of the Gaols, cause open Proclamation to be made, as well of this present Act, and of every Thing therein contained, as also of all other Statutes heretofore made against unlawful Maintenance, Champery, Embracery or unlawful Retainers, to the Intent that no manner of Person or Persons hearing the same, should be ignorant or miscongnisant of the Dangers and Penalties therein contained and specified.

Within what Time
the Offender shall
be sued

Rast. 119, 437.
Co. pl. f. 163.
Co. Lit. 309. a.

VI. Provided alway, and be it enacted by the Authority aforesaid, That this Act shall not extend to charge any Person or Persons with any of the Penalties mentioned in the said Act, for any Offence by him or them committed contrary to the said Act, except the same Person or Persons so offending be sued thereof by Action of Debt, Bill, Plaint or Information in any of the King's Courts, within one Year next after the same Offence by him or them committed, as is aforesaid

PART III. CLASS XI.

TRANSFER OF STOCK.

No. 1.

36 George III. c. 90.—An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of *England*.* [14th May, 1796.]

WHEREAS by the Laws in being relative to the Transfers of Stocks and Annuities transferrable at the Bank of *England*, all such Transfers are required to be entered or registered; and such Entries are to be conceived in proper Words for that Purpose, and to be signed by the Parties making such Transfers, or (if such Party be absent) by his, her, or their Attorney thereunto lawfully authorized; and it is also declared, that no other Method of assigning or transferring such Stock and Annuities shall be good or available in Law: And whereas the Persons equitably and beneficially entitled to or interested in the said Stocks and Annuities have been and are put to great Inconveniencies by reason that the Trustees and other Persons, according to the said Laws in being; alone qualified to make Transfers and to receive the Dividends of such Stocks and Annuities vested in them in Trust, have been and are absent out of the Jurisdiction or not amenable to the Process of the High Court of Chancery or the Court of Exchequer; and other Cases of like Inconvenience have arisen: For Remedy whereof be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, when and as often as it shall happen that all and every the Person or Persons in whose Name or Names any Part or Parts of the several Stocks and Annuities transferrable, or which hereafter shall be made transferrable, at the Bank of *England*, is, are, or shall be standing as a Trustee or Trustees, or the legal Personal Representative or Representatives of any such Person or Persons being deceased, shall be absent out of the Jurisdiction or not amenable to the Process of the said Courts of Chancery and Exchequer, or shall be a Bankrupt or Bankrupts, Lunatic or Lunatics, or shall refuse to transfer the Stock or Annuities, so legally vested in him, her, or them, or

When Trustees, in whose Names Stock all standing at the Bank, shall be absent, out of the Jurisdiction of the Chancery and Exchequer, or be Bankrupts, &c. the said Courts in any Cause depending thereon, may order the Stock to be transferred and the Dividends paid; and when all the Trust cannot be held, may order the said Court to transfer such, &c.

* See *Shaw v. Wright*, 3 Ves. 22, 25.—*Rider v. Kidder*, 13 Ves. 123.—It certainly will be very desirable to apply the Principle of these Acts to real Estates, and to enable the Courts of Equity, by the Medium of their Officers, to execute the Functions of unknown, absent, or incapable Trustees.

No. 1.
35 Geo. III. c. 90

to receive or pay over the Dividends of such Stock or Annuities to the Person or Persons beneficially entitled thereto, or it shall be uncertain or unknown whether such Trustee or Trustees, Representative or Representatives, is or are living or dead; and then and in all and every such Case and Cases it shall and may be lawful to and for the said Courts of Chancery and Exchequer respectively, in any Cause depending in the said Courts respectively, to order and direct that the Accountant General, or the Secretary or Deputy Secretary, for the Time being, of the Governor and Company of the Bank of England, do transfer in the Book or Books of the said Company, such Stock or Annuities as aforesaid, either to and into the Name of the Accountant General of the said Court of Chancery, or of the Deputy Remembrancer of the said Court of Exchequer, in Trust in such Cause, or otherwise, to and into the Name or Names of the Person or Persons equitably or beneficially entitled to such Stock or Annuities as the Cases may respectively require, and as to the said Courts of Chancery and Exchequer shall, in their Discretion seem fit; and also to order and direct that the said Accountant General, Secretary or Deputy Secretary, for the Time being, of the Governor and Company of the Bank of England, do also receive and pay over the Dividends of such Stock and Annuities as the said Courts shall direct; and when and as often as it shall happen that one or more only, and not all or both of such Trustees or Personal Representatives as aforesaid, shall be so absent or not amenable to such Process as aforesaid, or a Bankrupt or Bankrupts, Lunatic or Lunatics, or shall refuse as aforesaid, or it be uncertain or unknown whether any one or more of such Trustees or Representatives is or are living or dead, that then and in all and every such last mentioned Case and Cases it shall and may be lawful to and for the said Courts of Chancery and Exchequer respectively, to order and direct that the other and others of such Trustees and Representatives, who shall be forthcoming and ready and qualified to act, do transfer such Stock or Annuities to and into the Name or Names of such Person or Persons as aforesaid, as the Cases may respectively require, and as to the said Courts shall in their Discretion seem fit; and also that such forthcoming Trustee or Trustees, Representative or Representatives, do also receive and pay over the Dividends of such Stock or Annuities as the said Courts shall direct; and that all such Transfers and Payments so made in pursuance of this Act, shall be, and are hereby declared to be valid and effectual to all Intents and Purposes whatsoever; any former Statute, Law, Custom, or Usage, to the contrary thereof in anywise notwithstanding.

If Bankrupts refuse to transfer Stock standing in their own Right, the Lord Chancellor may order it to be transferred to the Assignees.

II. And whereas it hath frequently happened that Commissions of Bankrupt have issued against Persons having certain Parts of the said Stock or Annuities transferable at the Bank of England, standing in their Names in their own Right, and such Persons have thereupon been declared and adjudged Bankrupts, but have nevertheless refused to transfer or join in transferring such Stock or Annuities; for Remedy whereof be it enacted by the Authority aforesaid, That from and after the passing of this Act, when and as often as any Person or Persons shall be declared or adjudged Bankrupt, having any Part or Parts of the Stocks or Annuities transferable, or which hereafter shall be made transferable at the Bank of England, standing in his, her, or their Name or Names in his, her, or their own Right, it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, on the Petition of the Assignee or Assignees chosen under the said Commission, to order the said Accountant General, Secretary, or Deputy Secretary, for the Time being, of the Governor and Company of the Bank of England, to transfer the said Stock

or Annuities so standing in the Name or Names of the said Bankrupt or Bankrupts, in his, her, or their own Right, to and into the Name or Names of the said Assignee or Assignees, and also to receive and pay over the Dividends of such Stock and Annuities to the said Lord Chancellor, Lord Keeper, or Commissioners for the Custody of the Great Seal of Great Britain, shall direct; and that all such Transfers and Payments shall be valid and effectual to all Intents and Purposes whatsoever; any former Statute, Law, Custom, or Usage to the contrary thereof in anywise notwithstanding.

No. 1.
36 Geo. III. c. 90.

III. And whereas Commissions in the Nature of a Writ de Lunatico Inquirendo have frequently issued, and Persons have thereupon been found Lunatics, having certain Parts of the Stocks and Annuities transferrable at the Bank of England, standing in the Names of such Lunatics in their own Right, and the Committees of the Estates of such Lunatics having like Parts of such Stocks and Annuities standing in their own Names in Trust for or as Part of the Property of such Lunatics, have sometimes died intestate, or gone to reside beyond the Seas, or have themselves become Lunatics, or it has been uncertain and unknown whether they were living or dead: And whereas it is sometimes proper and expedient that such Parts of the Property of such Lunatics as aforesaid should be transferred, but by the Laws in being no valid or effectual Transfer thereof can be made, whereby great Inconveniencies have arisen: for Remedy whereof be it enacted by the Authority aforesaid, That, from and after the passing of this Act, in all Cases whatsoever, where any such Stock or Annuities transferrable or to be made transferrable at the Bank of England, is, are, or shall be standing in the Name or Names of such Lunatic or Lunatics, in his, her, or their own Right, or in the Name or Names of the Committee or Committees of his, her, or their Estate or Estates, in Trust for the said Lunatic or Lunatics, or as Part of his, her, or their Property, it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal of Great Britain for the Time being, to order the Accountant General, Secretary, or Deputy Secretary, for the Time being, of the Governor and Company of the Bank of England, to transfer such Stock or Annuities to or into the Name of any new Committee or Committees, or otherwise, and also to receive and pay over the Dividends thereof, as the said Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal of Great Britain for the Time being, shall direct; and that such Transfers and Payments shall be valid and effectual to all Intents and Purposes whatsoever; any former Statute, Law, Custom, or Usage, to the contrary thereof in anywise notwithstanding.

Stock standing in the Names of Lunatics, or their Committees, may in certain Cases be ordered by the Lord Chancellor to be transferred, &c.

IV. And be it enacted by the Authority aforesaid, That this present Act shall be and is hereby declared to be a full and complete Indemnity and Discharge to the said Governor and Company of the Bank of England, their Officers and Servants, for all Things done, or permitted to be done pursuant thereto, and that the same shall not be questioned or impeached in any Court of Law or Equity whatsoever, to their Prejudice or Detriment; and that this present Act shall be, and is hereby declared to be, and to be reputed and taken as a Public Act, to all Intents and Purposes whatsoever.

Act to be an Indemnity to the Bank.

No. 2,

52 George III. c. 32.—An Act for the Relief of Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferrable at the Bank of *England*. [20th April 1812.]

52 Geo. III. c. 32

Court of Chancery or Exchequer may order Dividends of Stocks &c. belonging to Infants, to be paid to Guardians for Maintenance of Infants, &c.

WHEREAS Inconvenience has been experienced from the Want of Authority in the Courts of Chancery and Exchequer to direct for the Use of Infants the Payment of the Dividends of Stock belonging to such Infants, and standing in their Names in the Books of the Governor and Company of the Bank of *England*: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall and may be lawful to and for the Courts of Chancery and Exchequer respectively, in any Cause depending, or hereafter to be depending, in the said Courts respectively, to order and direct all or any Dividends due and belonging or hereafter to become due and belonging to any Infant or Infants, Parties to any such Cause, on any of the Public or other Stocks, Funds or Annuities whatsoever, transferrable or which shall or may hereafter be made transferrable in the Books of the Governor and Company of the Bank of *England*, standing in the Name or Names of such Infant or Infants, and to which such Infant or Infants is or are beneficially entitled, to be paid to any Guardian or Guardians of such Infant or Infants respectively, or to any other Person or Persons, according to the Discretion of such Courts respectively, to or for the Maintenance and Education, or otherways for the Use and Benefit of such Infant or Infants; such Guardian or Guardians, or other Person or Persons, to whom such Payment is directed to be made, being named in the Order directing such Payment; and the Receipt, Acquittance or Discharge of such Guardian or Guardians, or other Person or Persons so named for such Dividend or Dividends, or Sum or Sums of Money, as shall be so ordered and directed to be paid to them, or any Part thereof, shall be as good, valid and effectual, at all times and to all Intents and Purposes whatsoever, both at Law and in Equity, to and for the said Governor and Company of the Bank of *England*, against such Infant or Infants to whom such Dividend or Dividends, Sum or Sums of Money have been or shall be due and belong, his, her or their Executors, Administrators or Assigns, as if such Receipt, Acquittance or Discharge, had been actually signed by such Infant or Infants, after he, she or they had actually attained his, her or their Age of Majority, and were capable by Law of signing and giving the same; and that this Act shall be, and is hereby declared to be a full and complete Indemnity and Discharge to the said Governor and Company of the Bank of *England*, their Officers and Servants, for all things done or permitted to be done pursuant thereto; and this Act shall be deemed and taken as a Public Act to all Intents and Purposes whatsoever.

No. 3.

52 George III c. 158.—An Act to extend the Provisions of an Act passed in the Thirty sixth Year of the Reign of His present Majesty, for the Relief of Persons equitably entitled to Stocks and Annuities transferrable at the Bank of England, and of an Act passed in this present Session for the Relief of Infant Suitors entitled to the like Stocks and Annuities, to all other transferrable Stocks and Funds. [29th July 1812.]

WHERBAS by an Act passed in the Thirty sixth Year of the Reign of His present Majesty, intituled *An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of England*, Provision is made for the Transfer and Receipt of Dividends under and by the Direction of His Majesty's High Court of Chancery, or of the Court of Exchequer, of and on Stocks and Annuities transferrable at the Bank of England, standing in the Name or Names of any Person or Persons who being Trustees or Trustees, or the legal personal Representative or Representatives of any such Person or Persons, shall be absent, out of the Jurisdiction, or not amenable to the Process of the Courts of Chancery and Exchequer, or who are Bankrupt or Bankrupts, Lunatic or Lunatics, or who shall refuse to transfer the Stock or Annuities legally vested in him, her or them, or to receive or pay over the Dividends of such Stock or Annuities to the Person or Persons beneficially entitled thereto, or in case it is uncertain or unknown whether such Trustee or Trustees, Representative or Representatives, is or are living or dead, and by the same Act Provision is made for the Transfer, under the Direction of the Lord Chancellor, of Stocks and Annuities transferrable at the Bank of England, standing in the Name of Persons declared or adjudged Bankrupt in his, her or their own Right, and for Receipt of the Dividends of such Stock and Annuities; and by the same Act Provision is made for Transfer, under the like Direction, of Stock and Annuities transferrable at the Bank, standing in the Name or Names of a Lunatic or Lunatics in his, her or their own Right, or in the Name or Names of the Committee or Committees of his, her or their Estate or Estates, in Trust for the said Lunatic or Lunatics, or as Part of his, her or their Property: And whereas by an Act passed in this present Session of Parliament, intituled, *An Act for the Relief of the Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferrable at the Bank of England*, it is enacted, That it shall be lawful for the Courts of Chancery and Exchequer to order and direct, all or any Dividends due to any Infant or Infants, or any of the public or other Stocks, Funds or Annuities, transferrable in the Books of the Governor and Company of the Bank of England, standing in the Name or Names of such Infant or Infants, and to which such Infant or Infants is or are beneficially entitled, to be paid for the Use and Benefit of such Infant or Infants: And whereas it is expedient that the Operation of the said Acts respectively should be extended to South Sea Stock, East India Stock, and all other transferrable Stocks, Annuities and Funds; Be it therefore enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That

52 G. III. c. 158.

36 G. III. c. 90.

sec. 1.

Sec. 2.

Sec. 3.

52 G. 3. c. 35.

Extended to South Sea, East India and all other stocks.

No. 3.
52 G. III. c. 158.

all and every the Provisions and Enactments in the said several Acts contained, in any ways relating to any Stock or Annuities transferrable at the Bank of *England*, or transferrable in the Books of the Governor and Company of the Bank of *England*, or to any Dividends on such Stocks or Annuities, shall be deemed and construed to extend, and are hereby extended to *South Sea* Stock, *East India* Stock, and all other Stocks, Annuities and Funds transferrable or to be made transferrable in the Books of the *South Sea* Company, or in the Books of the United Company of Merchants of *England* trading to the *East Indies*, or in the Books of any other Company or Society established or to be established, and to the Dividends payable thereon respectively, as fully as if such several Provisions and Enactments *mutatis mutandis* were here inserted at Length.

Court of Chancery
to give necessary
Orders.

II. Provided always, and be it enacted, That in all cases in which by the said first recited Act any Act is directed to be done by the Accountant General, or the Secretary or Deputy Secretary for the time being of the Governor and Company of the Bank of *England*, the same Acts, so far as they relate to *South Sea* Stock, *East India* Stock, or any other Stocks or Annuities to which the Enactments and Provisions of the said recited Acts are hereby extended, shall be done by such Persons as shall be appointed for that Purpose by the several Orders of the Court of Chancery or Court of Exchequer, or of the Lord High Chancellor, under the Authority of which such Acts respectively are to be done.

Acts done under
Act not impeach-
ed.

III. And be it enacted, That this present Act shall be, and is hereby declared to be, a full and complete Indemnity and Discharge to the *South Sea* Company, the *East India* Company, and all other Companies and Societies, and their Officers and Servants, for all Things done or permitted to be done pursuant thereto, and that the same shall not be questioned or impeached in any Court of Law or Equity to their Prejudice or Detriment.

PART III. CLASS XII.

RESTITUTION OF STOLEN PROPERTY.

No. 1.

21 Henry VIII. c. 11.—At what Time Restitution shall be made of Goods stolen.

BE it enacted by this present Parliament, That if any Felon or Felons hereafter do rob, or take away any Money, Goods; or Chattles, from any of the King's Subjects, from their Person or otherwise, within this Realm, and thereof the said Felon or Felons be indicted, and after arraigned of the same Felony, and found guilty thereof, or otherwise attainted by reason of Evidence given by the Party so robbed, or Owner of the said Money, Goods, or Chattles, or by any other by their Procurement, that then the Party so robbed, or Owner, shall be restored to his said Money, Goods, and Chattles; and that as well the Justices of Gaol delivery, as other Justices, afore whom any such Felon or Felons shall be found guilty, or otherwise attainted, by reason of Evidence given by the Party so robbed, or Owner, or by any other by their Procurement, have Power, by this present Act, to award, from Time to Time, Writs of Restitution for the said Money, Goods, and Chattles, in like Manner as though any such Felon or Felons were attainted at the Suit of the Party in Appeal.

21 Henry 8 c. 11.
There shall be Restitution to the Owner of stolen Goods after the Attainder of the Felon
2 Bulstr. 310.
Cro. El. 661.
Kelyng 48.

5 Co. 110.

No. 2.

2 & 3 Philip & Mary, c. 7.—An Act against the buying of stolen Horses.

FORASMUCH as stolen Horses, Mares, and Geldings, by Thieves and their Confederates, be for the most Parts sold, exchanged, given or put away in Houses, Stables, Back-sides and other secret and privy Places of Markets and Fairs, and the Toll also privily paid for the same, whereby the true Owners thereof, being not able to try the Falshood and Covin betwixt the Buyer and Seller of such Horses, Mares, or Gelding, is by the Common Law of this Realm without Remedy:

2 & 3 Phil. & M. c. 7.
11 H. 7 c. 13.
Further Provisions relating hereto,
31 El. c. 12.

II. Be it therefore enacted by the Authority of this present Parliament, That the Owner, Governor, Ruler, Fermor, Steward, Bailiff, or Chief Keeper of every Fair and Market overt within this Realm, and other the Queen's Dominions, shall before the Feast of Easter next, and so yearly, appoint and limit out a certain and special open Place within the Town, Place, Field or Circuit, where Horses, Mares,

In what Manner Horses shall be sold in Fairs or Markets.

No. 2.

§ 1. v. p. & M. c. 7

The former Mis-
u- in vol of o
len Horses

A Place shall be
appointed in a
Horse-fair, and also
a Toll-Taker

When where and
of whom, Toll for
Horse shall be
taken.

Geldings and Colts have been and shall be used to be sold in any Fair or Market overt; in which said certain and open Place, as is aforesaid, there shall be, by the said Ruler or Keeper of the said Fair or Market, put in and appointed one sufficient Person or more, to take Toll and keep the same Place from Ten of the Clock before Noon until Sun-set of every Day of the aforesaid Fair and Market, upon Pain to lose and forfeit for every Default Forty Shillings: And that every Toll-Gatherer, his Deputy or Deputies, shall, during the Time of every the said Fairs and Markets, take their due and lawful Tolls for every such Horse, Mare, Gelding or Colt, at the said open Place to be appointed as is aforesaid, and betwixt the Hours of Ten of the Clock in the Morning and sun-set of the same Day, if it be tendred, and not at any other Time or Place; and shall have presently before him or them, at the taking of the same Toll, the Parties to the Bargain, Exchange, Gift, Contract, or putting away of every such Horse, Mare, Gelding or Colt; and also the same Horse, Mare, Gelding and Colt so sold exchanged or put away; and shall then write or cause to be written in a Book to be kept for that Purpose, the Names, Surnames, and Dwelling-places of all the said Parties, and the Colour, with one special Mark at the least, of every such Horse, Mare, Gelding and Colt; on Pain to forfeit at and for every Default contrary to the Tenor thereof, Forty Shillings.

A Note of all
Horses sold in a
Fair or Market

III And the said Toll-Gatherer or Keeper of the said Book shall within one Day next after every such Fair or Market bring and deliver his said Book to the Owner, Governor, Ruler, Steward, Bailiff or Chief Keeper of the said Fair or Market, who shall then cause a Note to be made of the true Number of all Horses, Mares, Geldings and Colts sold at the said Market or Fair, and shall there subscribe his Name, or set his Mark thereunto; upon Pain to him that shall make Default therein, to lose and forfeit for every Default Forty Shillings, and also answer the Party grieved by reason of the same his Negligence in every Behalf.

The using of a
stolen Horse in a
Fair, or for be-
tore the Owner's
Property shall be
taken away.

IV. And be it further enacted by the Authority aforesaid, That the Sale, Gift, Exchange, or putting away after the last Day of February now next coming, in any Fair or Market overt, of any Horse, Mare, Gelding or Colt, that is or shall be thievishly stolen, or feloniously taken away from any Person or Persons, shall not alter, take away, nor exchange the Property of any Person or Persons to or from any such Horse, Mare, Gelding or Colt, unless the same Horse, Mare, Gelding or Colt shall be in the Time of the said Fair or Market wherein the same shall be so sold, given, exchanged, or put away, openly ridden, led, walked, driven or kept standing by the Space of one Hour together at the least, betwixt Ten of the Clock in the Morning and the Sun-setting, in the open Place of the Fair or Market wherein Horses are commonly used to be sold, and not within any House, Yard, Back-side or other privy or secret Place, and unless all the Parties to the Bargain, Contract, Gift or Exchange, present in the said Fair or Market, shall also come together, and bring the Horse, Mare, Gelding or Colt so sold, exchanged, given or put away, to the open Place appointed for the Toll-Taker, or for the Book-keeper where no Toll is due, and there enter or cause to be entered their Names and Dwelling-places, in Manner as is aforesaid, with the Colour or Colours, and one special Mark at the least of every the same Horses, Mares, Geldings or Colts, in the Toll-Taker's Book, or in the Keeper's Book for that Purpose where no Toll is due, as is aforesaid, and also pay him their Toll, if they ought to pay any; and if not, then the Buyer to give one Penny for the Entry of their Names, and executing the other Circumstances afore rehearsed, to him that shall write the same in the said Book.

V. And if any Horse, Mare, Gelding or Colt, that is or shall be thievishly stolen or taken away, shall after the said last Day of *February* next coming be sold, given, exchanged or put away, in any Fair or Market, and not used in all Points according to the Tenor and Intent of this Estatute, that then the Owner of every such Horse, Mare, Gelding or Colt, shall and may by Force of this Estatute seise or take again the said Horse, Mare, Gelding or Colt, or have an Action of Detinue or Replevin for the same; any Sale, Gift, Exchange, or putting away of any such Horse, Mare, Gelding or Colt, other than according to this Estatute, in any wise notwithstanding.

No. 2.

2 & J. F. & M. c. 7.

VI. The one Half of all which Forfeitures to be to the King and Queen's Majesties, her Heirs and Successors, and the other to him or them that will sue for the same before the Justices of Peace, or in any of the King's and Queen's Majesties ordinary Courts of Record, by Bill, Plaint, Action of Debt or Information, in which Suits no Protection, Essoin or Wager of Law shall be allowed.

VII. And be it enacted by the Authority aforesaid, That the Justices of Peace of every Place and County, as well within Liberties as without, shall have Authority in their Sessions, within the Limits of their Authority and Commission, to inquire, hear and determine all Offences against this Estatute, as they may do any other Matter triable before them.

The Justices of Peace shall hear and determine the Offences aforesaid.

VIII. Provided always, That in every such Fair or Market, where any Toll is nor shall be due nor leviable, by reason of the Freedom, Liberty or Privilege of the said Fair or Market, the Keeper or Keepers of the Book, touching the Execution of this present Act, shall take nor exact but one Penny upon and for every Contract, for his Labour in writing the Entry concerning the Premises, in Manner and Form as is before declared.

The Allowance of the Keeper of the Book where no Toll is due.

No. 3.

* 31 Elizabeth, c. 12.—An Act to avoid Horse stealing.

WHEREAS through most Counties of this Realm Horse-stealing is grown so common, as neither in Pastures or Closes, nor hardly in Stables, the same are to be in Safety from stealing, which ensueth by the ready buying of the same by Horse-courcers and others, in some open Fairs or Markets far distant from the Owner, and with such Speed as the Owner cannot by Pursuit possibly help the same; and sundry good Ordinances have heretofore been made touching the Manner of Selling and Tolling of Horses, Mares, Geldings and Colts in Fairs and Markets, which have not wrought so good Effect for the repressing or avoiding of Horse-stealing, as was expected:

31 Eliz. c. 12.

11 H. 7, c. 13.

Sellers of Horses in Fairs or Markets must be known to the Toll-taker, or some other who will avouch the sale, which shall be entered in the Toll-book, Ac. 2 & 3. & M. c. 7. Palmer 486. 487. 2 Inst. 713. Lutw. 197.

II. Now for a further Remedy in that Behalf, Be it enacted by the Authority of this present Parliament, That no Person after twenty Days next after the End of this Session of Parliament, shall in any Fair or Market sell, give, exchange or put away any Horse, Mare, Gelding, Colt or Filly, unless the Toll-taker there, or (where no Toll is paid) the Book-keeper, Bailiff or the Chief Officer of the same Fair or Market, shall and will take upon him perfect Knowledge of the Person that so shall sell or offer to sell, give or exchange any Horse, Mare, Gelding, Colt or Filly, and of his true Christian Name, Surname and Place of Dwelling or Resiency, and shall enter all the same his Knowledge into a Book there kept for Sale of Horses; or else, that he so selling or offering to sell, give, exchange or put away any Horse, Mare, Gelding, Colt or Filly, shall bring unto the Toll-taker, or other

No. 2.

21 Edw. c. 12.

A sufficient and credible Person shall avouch the Horse-seller.

The Price of the Horse shall be entered in the Toller's Book.

A Note in Writing shall be given to the Buyer.

The Penalty of the Person often in g is any of the Cases aforesaid
1. Letw. 107.

Every Sale other than made shall be void.

The Justices of Peace may hear and determine the Offences aforesaid.

Officer aforesaid, of the same Fair or Market, one sufficient and credible Person that can, shall or will testify, and declare unto and before such Toll-taker, Book-keeper or other Officer, That he knoweth the Party that so selleth, giveth, exchangeth or putteth away such Horse, Mare, Gelding, Colt or Filly; and his true Name, Surname, Mystery and Dwelling-place, and there enter or cause to be entered in the Book of the said Toll-taker or Officer, as well the true Christian Name, Surname, Mystery and Place of Dwelling or Resiency of him that so selleth; giveth, exchangeth or putteth away any such Horse, Mare, Gelding, Colt or Filly, as of him that so shall testify or avouch his Knowledge of the same Person; and shall also cause to be entered the very true Price or Value that he shall have for the same Horse, Mare, Gelding, Colt or Filly so sold; And that no Person shall take upon him to avouch, testify or declare, That he knoweth the Party that so shall offer to sell, give, exchange or put away any such Horse, Mare, Gelding, Colt or Filly, unless he do indeed truly know the same Party, and shall truly declare to the Toll-taker or other Officer aforesaid, as well the Christian Name, Surname, Mystery and Place of Dwelling and Resiency of himself, as of him of and for whom he maketh such Testimony and Avouchment: And that no Toll-taker or other Person keeping any Book of Entry of Sales of Horses in Fairs or Markets, shall take or receive any Toll, or make Entry of, any Sale, Gift, Exchange, or putting away of any Horse, Mare, Gelding, Colt or Filly, unless he knoweth the Party that so selleth, giveth, exchangeth or putteth away any such Horse, Mare, Gelding, Colt or Filly, and his true Christian Name, Surname, Mystery and Place of his Dwelling or Resiency, or the Party that shall and will testify and avouch his Knowledge of the same Person so selling, giving, exchanging or putting away such Horse, Mare, Gelding, Colt or Filly, and his true Christian Name, Surname, Mystery and Place of Dwelling or Resiency, and shall make a perfect Entry into the said Book, of such his Knowledge of the Person, and of the Name, Surname, Mystery and Place of the Dwelling or Resiency of the same Person, and also the true Price or Value that shall be bona fide taken or had for any such Horse, Mare, Gelding, Colt or Filly so sold, given, exchanged or put away, so far as he can understand the same, and then give to the Party so buying or taking by Gift, Exchange or otherwise, such Horse, Mare, Gelding, Colt or Filly, requiring and paying two Pence for the same, a true and perfect Note in Writing of all the full Contents of the same, subscribed with his Hand; on Pain that every Person that so shall sell, give, exchange or put away any Horse, Mare, Gelding, Colt or Filly, without being known to the Toll-taker or other Officer aforesaid, or without bringing such a Voucher or Witness, causing the same to be entered as aforesaid, and every Person making any untrue Testimony or Avouchment in the Behalf aforesaid, and every Toll-taker, Book-keeper or other Officer of Fair or Market aforesaid, offending in the Premises contrary to the true meaning aforesaid, shall forfeit foreverly such Default the Sum of five Pounds; but also that every Sale, Gift, Exchange or other putting away of any Horse, Mare, Gelding, Colt or Filly, in Fair or Market, not used in all Points according to the true Meaning aforesaid, shall be void; the one Half of all which Forfeitures to be to the Queen's Majesty, her Heirs and Successors, and the other Half to him or them that will sue for the same before the Justices of Peace, or in any of her Majesty's ordinary Courts of Record, by Bill, Plaint, Action of Debt or Information; in which no Pardon or Protection shall be allowed.

III. And be it further enacted, That the Justices of Peace of every Place and County, as well within Liberties as without, shall have Authority in their Sessions, within the Limits of their Authority and

Commission, to enquire, hear and determine all Offences against this Statute, as they may do any other Matter triable before them.

No. 3.
81 Eliz. c. 12.

IV. And be it further enacted, That if any Horse, Mare, Gelding, Colt or Filly, after twenty Days next ensuing the End of this Session of Parliament, shall be stolen, and after shall be sold in open Fair or Market, and the same Sale shall be used in all Points and Circumstances as aforesaid, that yet nevertheless the Sale of any such Horse, Mare, Gelding, Colt or Filly, within six Months next after the Felony done, shall not take away the Property of the Owner from whom the same was stolen, so as Claim be made within six Months by the Party from whom the same was stolen, or by his Executors or Administrators, or by any other by any of their Appointment, at or in the Town or Parish where the same Horse, Mare, Gelding, Colt or Filly shall be found, before the Mayor or other Head Officer of the same Town or Parish, if the same Horse, Mare, Gelding, Colt or Filly shall happen to be found in any Town Corporate or Market Town, or else before any Justice of Peace of that County near to the Place where such Horse, Mare, Gelding, Colt or Filly shall be found, if it be out of a Town Corporate or Market-Town; and so as Proof be made within forty Days then next ensuing by two sufficient Witnesses, to be produced and deposed before such Head Officer or Justice, (who by Virtue of this Act shall have Authority to minister an Oath in that Behalf) that the Property of the same Horse, Mare, Gelding, Colt or Filly so claimed, was in the Party, by or from whom such Claim is made, and was stolen from him within six Months next before such Claim of any such Horse, Gelding, Mare, Colt or Filly; but that the Party from whom the said Horse, Mare, Gelding, Colt or Filly was stolen, his Executors or Administrators shall and may at all Times after, notwithstanding any such Sale or Sales in any Fair or open Market thereof made, have Property and Power to have, take again and enjoy the said Horse, Mare, Gelding, Colt or Filly, upon Payment or Readiness, or Offer to pay, to the Party that shall have the Possession and Interest of the same Horse, Mare, Gelding, Colt or Filly, if he will receive and accept it, so much Money as the same Party shall depose and swear before such Head Officer or Justice of Peace (who by Virtue of this Act shall have Authority to minister and give an Oath in that Behalf) that he paid for the same *bona fide*, without Fraud or Collusion; any Law, Statute or other Thing to the contrary thereof in any wise notwithstanding.

The Owner may redeem a Horse stolen from him within six Months after, paying the Price.
Kelyng 48.

V. And be it further enacted by the Authority aforesaid, That after twenty Days after the End of this Session of Parliament, not only all Accessories before such Felony done, but also all Accessories after such Felony, shall be deprived and put from all Benefit of their Clergy, as the Principal by Statute heretofore made is or ought to be.

An Accessary to a Horse stealer shall not have his Clergy
1 E. 6. c. 12.
2 & 3 E. 6. c. 33

No. 4.

James I. c. 21.—An Act against Brokers.

FORASMUCH as of long and ancient Time by divers hundred Years there have been used within the City of London and Liberties thereof, certain Freemen of the City, to be selected out of the Companies and Mysteries whereof they are free and Members, and the same Persons to be presented at least by six approved and known honest Persons of the same Mystery, to the Lord Mayor of London for the Time being, and to the Aldermen his Brethren, and to be recommended by such Presentors to be Persons for their known

James I. c. 21.
The Manner to present and allow of Brokers in London.
Stat. Civ. Lond.
13 E. 1, St. 5.

No. 4.

1 James I, c. 21.

approved Honesty, Integrity, and Faithfulness, Persons meet for to be Broker or Brokers, and upon such Relation made to the Mayor and Aldermen, and partly by their own Knowledge and diligent Enquiries made of the said Persons, and of their honest Fame, Report, Fidelity and Skill, have been thereupon admitted, allowed and approved by the Lord Mayor of the City and Aldermen in the Court of Aldermen, to be Brokers within the said City and Liberties of the same, and have taken their corporal Oaths before the said Mayor and Aldermen, from Time to Time as they were so presented and admitted, to use and demean themselves uprightly and faithfully between Merchant *English* and Merchant Strangers, and Tradesmen, in the contriving, making and concluding Bargains and Contracts to be made between them concerning their Wares and Merchandizes to be bought and sold and contracted for within the City of London, and Monies to be taken up by Exchange between such Merchant and Merchants, and Tradesmen; and these Kind of Persons so presented, allowed and sworn to be Brokers, as aforesaid, have had and borne the Name of Brokers, and been known, called and taken for Brokers, and dealing in Brokage or Brokery; (2) who never of any ancient Time used to buy and sell Garments, Household Stuff, or to take Pawns and Bills of Sale of Garments and Apparel, and all Things that come to Hand, for Money laid out and lent upon Usury, or to keep open Shops, and to make open Shews, and an open Trade, as now of late Years hath and is used by a Number of Citizens, assuming unto themselves the Name of Brokers and Brokerage, as though the same were an honest and lawful Trade, Mystery or Occupation, terming and naming themselves Brokers, whereas in Truth they are not, abusing the true and honest ancient Name and Trade of Broker or Brokerage.

The Differences
between ancient
present Brokers.

The Abuse of
Brokerage in these
later Years.

II. And forasmuch as many Citizens, Freemen of the City, being Men of manual Occupations, and Handicraftsmen, and others inhabiting and remaining near the City and Suburbs of the same, have left and given over, and daily do leave and give over, their handy and manual Occupations, and have and daily do set up a Trade of buying and selling, and taking to pawn of all kind of worn Apparel, whether it be old, or little the worse for wearing, Household Stuff and Goods, of what Kind soever the same be of, finding thereby that the same is a more idle and easier Kind of Trade of living, and that there ariseth and groweth to them a more ready, more great, more profitable, and speedier Advantage and Gain, than their former manual Labours and Trades did or could bring them;

III. And forasmuch as the said Kind of counterfeit Brokers, and Pawn-takers upon Usury or otherwise for ready Money, are grown of late to many Hundreds within the City of London, and other Places next adjoining to the City and Liberties of the same, and are like to increase to far greater Multitudes, being Frippeters, and no Brokers, not exercising of any honest and lawful Trade, and within the Memory of many yet living, such Kind of Persons Tradesmen were very few, and of small Number;

Frippeters and no
Brokers.

IV. And forasmuch as there are not any Garments, Apparel, Household Stuff, or other Goods of any Kind whatsoever the same be of, either being stolen or robbed from any, or badly or unlawfully purloined or come by, but these Kind of upstart Brokers, under Colour and Pretence they be Freemen of the said City of London, or inhabiting in Westminster, where they pretend to have the like Open Market as the City of London, and thereby presuming to be lawful for them to use and set up the same idle and needless Trades, being the very Means to uphold, maintain, and embolden all Kind of bad and lewd Persons to rob and steal; and unlawfully to get and conuq

By what Means
upstart Brokers
come by their
Goods.

‘ by true Mens Goods, knowing and finding that no sooner the same Goods can be stolen, or unlawfully come by, but that they shall and may presently utter, vent, sell and pawn the same to such Kind of new upstart Brokers, for ready Money: (2) For Remedy whereof, and for the avoiding of the said Mischiefs and Inconveniences, and for repressing and abolishing of the same idle and needless Trades and upstart Brokers, and for the avoiding of Thefts, Robberies, and Felonies, and bad People, and for the repressing of such Kind of Nourishers and Aiders of Thieves and bad People, and for the Defence of honest and true Mens Properties and Interests in their Goods:’

No. 4.
1 James I. c. 21.

Inconveniences
ensuing by upstart
Brokers.

V. Be it enacted and declared by our Sovereign Lord the King, with the Assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Sale, Exchange, Pawn, or Mortgage of any Jewel, Plate, Apparel, Household Stuff, or other Goods, of what Kind, Nature, or Quality soever the same shall be of, and that shall be wrongfully or unjustly purloined, taken, robbed or stolen from any Person or Persons, or Bodies Politick, and which at any Time hereafter shall be sold, uttered, delivered, exchanged, pawned, or done away, within the City of London or Liberties thereof, or within the City of Westminster in the County of Middlessex, or within Southwark in the County of Surrey or within Two Miles of the said City of London, to any Broker or Brokers, or Pawn-takers, by any Way or Means whatsoever, directly or indirectly, shall work or make any Change or Alteration of the Property or Interest of and from any Person or Persons, or Body Politick, from whom the same Jewels, Plate, Apparel, Household Stuff, or Goods were or shall be wrongfully purloined, taken, robbed, or stolen; any Law, Usage, or Custom to the contrary notwithstanding.

The Sale of Goods
wrongfully gotten
shall not alter the
Property of them.
Kelyng 50.

VI. And for the better maintaining of true honest Dealing, and for the eschewing and avoiding of Falsehood, Fraud, and Deceit, in such Kind of Brokers and Pawn-takers . . .

VII. Be it furthermore enacted and established by the like Authority, That if any Person or Persons, or Bodies Politick, from whom any Jewels, Plate, Apparel, Household Stuff, or any Kind of Goods whatsoever, shall be wrongfully purloined, taken, stolen, or robbed, shall require and demand of any such Broker or Pawn-taker to declare whether any such Goods be come to his or their Possessions, and to declare, shew, and manifest the same, and how and by what Means he had them, or came by the same, and how, when, and to whom he hath delivered, conveyed, or bestowed and employed the same; and that such Broker, upon any such Request and Demand to be made, shall deny and refuse to disclose, tell, or manifest the same truly and justly, shall forfeit unto the true Owner or Owners of such Jewels, Plate, Apparel, Household Stuff and other Goods, from whom the same were wrongfully purloined, taken, stolen, or robbed, double the Value thereof that shall be denied and refused to be disclosed, told, and manifested, as aforesaid; the same double Value to be recovered by the true Owner or Owners of such Goods from whom the same were wrongfully purloined, taken, robbed, or stolen, to be recovered by Action of Debt, Bill, or Plaint, in any of the King's Majesty's Courts of Record at Westminster, or within the City of London, in which no Essoin, Wager of Law, or Protection, shall be allowed.

* A Broker upon
Request shall de-
clare what Goods
be come to his
Hands.

VIII. Provided always, That this Act, nor any Thing therein contained, shall not be prejudicial or hurtful to the ancient Trade of Brokers within the City of London, using and exercising the ancient Trade of Brokers between Merchant and Merchant, or other Traders or Occupiers within the said City and the Liberties of the same, being selected as aforesaid.

PART III. CLASS XIII.

EXECUTORS AND ADMINISTRATORS.

No. 1.

Henry III. c. 18.—(MAGNA CHARTA.)—The King's Debtor dying, the King shall be first paid.

9 H. III. c. 18.
Rast. Ent. f. 541
Co. Ent. f. 564.
Fitz. Detinuc.
52, 56, 58, 60.
Brb. Ration. 2,
5, 6.
2 Inst. 32.

* Add *Lay*.
† Not in Orig.
Supra, c. 8.

IF any that holdeth of us Lay-fee do die, and our Sheriff or Bailiff do shew our Letters Patents of our summon for Debt, which the dead man did owe to us; it shall be lawful to our Sheriff or Bailiff to attach and in-
roll all the goods and chattels of the dead, being found in the said fee, to the Value of the same Debt, by the sight † and testimony of lawful men, so that nothing thereof shall be taken away, until we be clearly paid off the debt; (2) and the residue shall remain to the Executors to perform the testament of the dead; (3) and if nothing be owing unto us, all the chattels shall go to the use of the dead (saving to his wife and children their reasonable parts.)

Ex Rot. in Turr. Lond.

SI aliquis tenens de nobis laicum feodum moriatur & Vicecomes vel Ballivus noster ostendat litteras nostras patentes de summonitione nostra de debito quod defunctus nobis debuit liceat Vicecomiti vel Ballivo nostro attachiare & imbreviare omnia bona and catalla defuncti inventa in laico feodo ad valentiam illius debiti per visum legalium hominum Ita tamen quod nichil inde amoveatur donec persolvatur nobis debitum quod clarum fuerit & residuum relinquatur executoribus ad faciendum testamentum defuncti & si nichil nobis debeatur ab ipso catalla cedunt defuncto salvis uxori ejus & pueris ipsius rationalibus partibus suis.

No. 2.

13 Edward I. St. 1. (Westminster 2.) c. 19.—The Ordinary chargeable to pay Debts as Executors.

13 Ed. I. St. 1.
c. 19.
Dyer 232.
5 Co. 83.
Fitz Brief, 822.
Execut. 77

WHEREAS after the Death of a Person dying intestate, which is bounden to some other for Debt, the Goods come to the Ordinary to be disposed; (2) the Ordinary from henceforth shall be bound to answer the Debts

CUM post mortem alicujus decessit intestati & obligati aliquibus in debitis bona deveniant ad ordinarios disponenda obligetur decetero ordinarius ad respondendum de debitis quatenus bona de-

functi sufficiunt eodem modo quo
executores hujusmodi respondere
tenerentur si testamentum fecisset.

* as far forth as the Goods of the
Dead will extend, in such sort
at the Executors of the same
Party should have been bounded,
if he had made a Testament.'

No. 2.
13 Edw. 1. St. 1.
c. 19.

No. 3.

13 Edward I. St. 1. (Westminster 2.) c. 23.—Executors
may have a Writ of Accompt.

Ex Rott. in Tur. Lond.
HABEANT decetero execu-
tores breve de Compoto red-
dendo & eandem actionem & pro-
cessum per illud breve qualem ha-
buit mortuus & haberet si vixisset.

* **E**XECUTORS from hence-
forth shall have a Writ of
Accompt, and the same Action
and Process in the same Writ as
the Testator might have had if
he had lived.'

13 Ed. III. St. 1.
c. 23.
2 Inst. 404.
Fitz. Executors,
97.
4 Ed. 3. c. 7.

No. 4.

4 Edward III. c. 7.—Executors shall have an Action of
Trespas for a Wrong done to their Testator.*

ITEM come avant ces heures
executeurs nont pas eu action
des trespas faites as testatours come
des biens et chateux des diex testa-
tours emporrez en lour vie et usint
tieux trespas ont este depunita
tanque encea si est acorde qe les
executeurs en tieu cas aient action
devers les trespasours pur damage
en tieu cas recoverer en manere
come ceux qui executeurs ils sont
avereint s'ils fuissent en vie.

* **I**TEM, Whereas in Times
past Executors have not had
actions for a Trespas done to
their Testators, as of the Goods
and Chattels of the same Tes-
tators carried away in their Life,
and so such Trespases have
hitherto remained unpunished;
it is enacted, That the Executors
in such Cases shall have an ac-
tion against the Trespasgers, and
recover their Damages in like
Manner as they, whose Execu-
tors they be, should have had if
they were in Life.

4 Ed. III. c. 7.
Rast. 640.
13 Ed. 1. St. 1.
c. 23.
1 Vent. 187.
7 H. 4. f. 18.
11 H. 4. 3.
Fitz. Bar. 217.
Fitz. Execut.
52, 106. Cro.
El. 377, 384.
Latch. 167.

* In *Emerson v. Emerson*, 1 Vent. 187, the Declaration was, that the Defendant, *habeat crescentia* upon the Freehold of the Testator, *missit de faleavit cepit et asportavit*. And on Error it was objected, that it is a Trespas to the Freehold, for which the Statute gives no Action, and that as entire Damages were given, as well for cutting as the carrying away, the Judgment was erroneous, but all the Court were of another Opinion; for it is but one entire Trespas, the Declaration only describes the Manner of taking it away. Indeed, if it had been *quare clausum fregit et blada asportavit*, it had been nought, or if he had cut the Cord, and let it lie, no Action would have lain for the Executor. So if the Grass of the Testator be cut and carried away at the same Time, because the Grass is part of the Freehold, but Corn standing is a Chattel.—The Stat. of 4 Edward III. hath been always expounded largely.

In *Russell v. Pratt*, cited Anders. 243, it was held that an Executor might maintain *ejectione firmæ*, as the Testator had been wrongfully ousted of his Chattel.—In *Sale v. Sale*, Anders. 241 R. that an Executor shall have *quare impedit* for a Disturbance in the Life Time of the Testator.

- No 4. Debt on Stat. 2 Edward V. for not setting out Tythes—Holl v. Bradford, 4 Ed. III. c. 7. Sid. 88.—Morton v. Hopkins, id. 407.
 On Devastavit—Berwick v. Andrews, 1 Salk. 314.
 For an Escape of one taken in Execution, Dyer 322—Vi. Lord Raym. 40—1 Lord Raym. 273. Query, as to mesne Process, 1 Rol. 912.
 For False Return on *fieri facias*, Williams v. Grey—1 Lord Raym. 40—1 Salk. 12.
 On Stat. 8 Anne, c. 17. for removing Goods without paying a Year's Rent—Pulgrave v. Windam, 1 Str. 212.
 For other Cases see Com. Dig. Administration, B. 13.

No. 5.

25 Edward III. St. 5. c. 5.—Executors of Executors shall have the Benefit and Charge of the first Testator.

25 Ed. III. St. 5. c. 5.

13 Ed. I. St. 1. c. 23

Plowd. 286.

Fitz. Covenant,

24. Fitz. Exec-

cut. 92, 103,

110, 120.

ITEM it is accorded and stablished, That Executors of Executors shall have Actions of Debts, Accompts, and of Goods carried away of the first Testators, and Execution of Statutes Merchants and Recognizances made in Court of Record to the first Testator, in the same Manner as the first Testator should have had if he were in Life, as well of Actions of the Time past, as of the Time to come, in all Cases where Judgement is not yet given betwixt such Executors of Executors; but that the Judgements given to the contrary to this Article in Times past shall stand in their Force; and that the same Executors of Executors shall answer to other of as much as they have recovered of the Goods of the first Testators, as the first Executors should do if they were in full Life.*

ENSEMENT, acorde est & establi qe executours des ex-
 eient action des dettes
 accomptes & des biens emportez
 du primer testatour & execution
 des estatutz marchantz & reconis-
 sances faites en court de record
 au primer testatour en meisme la
 manere come le primer testatour
 auroit sil feust en vie auxibien
 dactions de temps passe come de
 temps avenir en toutz cases ou
 jugementz ne sont pas renduz
 unquore entre tiens executours
 des execontours mes que les jug-
 gementz au contraire en temps
 passe estoient en lour force & qe
 meismes les execontours des exe-
 cutours respoignent as autres de
 tant come ils averont recoveri des
 biens du primer testatour sicome
 les primers execontours ferroient
 sils feussent en pleine vie.

* The Executor of the Executor of J. S. may be named directly an Executor of J. S. 1 Leon 275.

No. 6.

31 Edward III. St. 1. c. 4. — Redressing of Extortion in Bishops' Officers in proving Wills.

Er Rot. in Turr. Lond.

ITEM come les ministres des Evesques & autres ordinaires de seinte eglise preignent du poeple grevous & outrageouses lynes par le provee des testamantz & par les acquitances egt faiz le Roi ad charge Lereceves-que de Canterbirs & les autres Evesques qils'ent mettent amendement & sils ne facent acorde est qe le Roi ferre enquere par ses Justices des tieux oppressions & extorions & des les oier & terminer sibi le la fuyte le Roi come de provee come auncienement ade sup use.

ITEM, Whereas the Ministers of Bishops and other Ordinaries of holy Church, take of the People grievous and outrageous Fine for the Probate of Testaments, and for the making of Acquittances thereof; That the King hath charged the Archbishop of *Canterbury*, and the other Bishops, that they cause the same to be amended; and if they do not, it is accorded, That the King shall cause to be inquired by his Justices of such Oppressions and Extortions, to hear them and determine them, as well at the King's Suit, as at the Suit of the Party, as in old time hath been used.

31 Ed. III. St. 1. c. 1.

No. 7.

31 Edward III. St. 1. c. 11. — To whom the Ordinary may commit the Administration of the Goods of him that dieth intestate. The Benefit and Charge of an Administrator.*

ITEM acorde est & assentu qu'en cas on homme deveint intestat les ordinaires feroient deputer de plus prochein & plus loialx

ITEM it is accorded and assented, That in case where a Man dieth intestate, the Ordinaries shall depute the next and

31 Ed. III. St. 1. c. 11.

* The Ordinary is bound to grant Administration to the Husband of the Effects of his Wife, except as to Cases where the Wife is specifically empowered to make a Will, and appoint an Executor. And in case of a limited Probate granted to the Executor of a married Woman, the Husband is intitled to Administration of the other Part of her Property, which is called *Administration Ceterorum*. The Husband is intitled to Administration, unless by some Act he has excluded himself.—*Itex. v. Bettersworth*, 2 Str. 1118.

Administration may be granted as to some Goods to the Wife, and as to others to the next of Kin; but separate Administrations cannot be granted of an entire Thing, as a Debt.—*Hawry v. Fawry*, 1 Salk. 36. As to the Degrees of Kindred, see Notes to the Statute of Distributions, 22 & 23 Chas. II. c. 10. post No. 15.

The whole Blood has not any Preference to the Half, in respect of the Rights of Administration, any more than in case of Distribution.

If Administration is granted to one, not next of Kin, it is not void, but voidable only.—*Blackborough v. Davies*, 1 Salk. 39.

Administration cannot be granted to a feme Covert, without the Permission of her Husband, except he is abroad, or otherwise incompetent, in which case a Stranger may give the proper Security in his Stead. The Administration is committed to the Wife alone, and not to her jointly with her

No. 7.
31 Ed. III. St. 1.
c. 11.

'most lawful Friends of the dead
' Person intestate to administer his
' Goods; (2) which Deputies shall
' have an Action to demand and
' recover as Executors the Debts
' due to the said Person intestate
' in the King's Court, for to admin-
' ister and dispend for the Soul
' of the Dead; (3) and shall an-
' swer also in the King's Court to
' other to whom the said dead
' Person was holden and bound,
' in the same Manner as Execu-
' tors shall answer. (4) And they
' shall be accountable to the Or-
' dinaries, as Executors be in the
' Case of Testament, as well of
' the Time past as the Time to
' come.'

amis du mort intestat pur admin-
nister ses biens les queux deputez
eient action a demander es reco-
verer come executours les dettes
dues au dit mort intestat en la
Court le Roi pur administer et
desprendre pur l'ame du mort et
respoignent auxint en la Court le
Roi as autres as queux le dit mort
estoit tenuz & obligez en mesme
la manere come executours respon-
dront. Et soient accountables as
ordinaires si avant come executours
sont en cas de testament sibien de
temps passe come de temps aven-
nir.

No. 8.

9 Henry VI. c. 4.—An *Idemplitate nominis* maintainable
by Executors, &c.

9 Hen. VI. c. 4.
2 Hen. V. c. 5.

'ITEM, For that before this
' Time many Outlawries have
' been pronounced against divers
' of the King's liege People; as
' well before the Statute of Ad-
' ditions made at Westminster the
' First Year of King HENRY the
' Fifth, Father to our Lord the
' King that now is, as sithence,
' in respect of which Outlawries,
' the Bodies of other Persons
' having such and like Names as
' they had which were outlawed
' indeed, have been taken and im-
' prisoned, and their Goods and

Ex Rot. in Turr. Lond.

'ITEM pur ceo qe avant ces
heures diverses utlagaries ont
este pronunciez en divers des lieges
du Roi sibien devant lestatut d'ad-
ditions fait a Westm' lan primer
le Roi HENRY quint pier a nostre
Seigneur le Roi q'orest come depuis
a cause des queles utlagaries les
corps d'autres gentz eianiz autielx
& semblables nouns come ceux
q' leuront utlagez en fait avoient
ount este prisez & emprisonnez &
leurs biens & chateaux pur celle

Husband, otherwise if he survived her, he would be Administrator contrary to the meaning of the Act—11 Vinet, Abr. 83—4 Burn Ec. L. 241—Com. Adm. D. Styles, 73. [But query, if it may not be so granted when the Wife is the sole next of Kin.]

A Party otherwise intitled to administer, may be disqualified by reason of attainder for Treason or Felony, Outlawry, Imprisonment, Absence beyond Sea, Bankruptcy, Insanity, or other legal Disability. As the Statute directs the Administration to be granted to the next and most lawful Friends, but alienized is not an Incapacity. See 9 Co. 39, 1 Salk. 86, Cro. Car. 9. 1 Brownl. St. 2 Ven. 126.

Administration de bonis non, or *Cum Testamento annexo*, need not be granted to the next of Kin—1 Ventr. 219; but the Spiritual Court is not compellable to grant Administration with the Will annexed to the residuary Legatee—*Rex v. Betterworth*, 2 Str. 936.

Administration durante Minoritate, need not be granted to the next of Kin—Hob. 250—Smith's Case, 2 Str. 892.

cause par leschetours nostre dit Seigneur le Roi & ses nobles progenitours seisez et combien que par le commune ley du Roialme brief de idempnitatie nominis ad estee maintainable pur mesme la persone que en la fourme soisdite fuist moleste & greve ne purquant si aucune persone des ditz lieges eiant semblable noun come aucun autre persone de mesurez les lieges gen fait fuist utlage avoit fait ses Executours & morust souvent avient que par malice & subtilz ymaginations les biens & chateaux de nre testatour que avoit mesme le noun come celui qi fuist utlage en fait avoit estoient seizes & escheiez es mains nostre dit Seigneur le Roy & de ses ditz progenitours en retardation del execution del testement de chescun tel testatour pur le doute qad estee de ceo que ascuns executours purroient par la commune ley avoir brief de idempnitatie nominis ou noun. Sur quoy par toller & remover tontz tiels doutes & ambiguites en cest cas en apres del assent & avis suisditz & a la especial request des ditz Communes ordeinez est & establez par auctorite de cest parlement de brief de idempnitatie nominis soit & poet estre graunte & donee bone & maintainable pur les executours de chescun testatour vixibien & de mesme leffect come la dite action de idempnitatie nominis foist maintainable devaunt cest parlement pur aucune persone mesme qi fuist ou purroit avoir este moleste ou greve par cause ou colour dascune tiel utlagarie. Et que ceste ordonnance ait relation & force par l'auctorite suisdite pur executours de chescun testatour vixibien de chescun utlagarie pronuncie en aucun persone a aucun temps devaunt cest parlement come de tontz maners d'utlagaries pronunciez en aucun persone en temps avenir.

“Chattles for this Cause seized No. 8.
 “by the Escheators of the King 9 Henry VII. c. 4.
 “and of his noble Progenitors: 37 Ewd. III. c. 2.
 “And although that by the com- Rast. 407.
 “mon Law of the Realm a Writ
 “of *Idempnitatie nominis* hath
 “been maintainable for the same
 “Person, which in the Form
 “aforesaid was molested and grie-
 “ved; nevertheless if any Person
 “of the said Lieges, having like
 “Name as any other Person of
 “the same liege People which was
 “outlawed in Deed, had made his
 “Executors, and died, often it
 “happened, that by Malice and
 “subtil Imaginations the Goods
 “and Chattels of such Testator,
 “which had the same Name as
 “he had which was outlawed in
 “Deed, were seized and escheated
 “to the Hands of our Lord the
 “King and of his Progenitors, in
 “Retardation of the Execution
 “of the Testament of every such
 “Testator, for the Doubt which
 “hath been, whether any Execu-
 “tors may by the Common Law
 “have a Writ of *Idempnitatie no-
 minis*, or not.” Wherefore to
 “take away and remove all such
 “Ambiguities and Doubts in this
 “Case hereafter, of the Assent and
 “Advice aforesaid, and at the special
 “Request of the said Commons,
 “it is ordained and established by
 “Authority of this Parliament,
 “That a Writ of *Idempnitatie no-
 minis* be granted and made good
 “and maintainable for the Execu-
 “tors of every Testator, to the
 “same Effect that the same Action
 “of *Idempnitatie nominis* was main-
 “tainable before this Parliament
 “for any Person himself which
 “was or might have been molested
 “or grieved because or by colour
 “of any such Outlawry.
 “And that this Ordinance shall
 “have relation and force, by Au-
 “thority aforesaid, for the Execu-
 “tors of every Testator, as well of
 “every Outlawry pronounced
 “against any Person at any Time
 “before this Parliament, as of all
 “Manner of Outlawries to be pro-
 “nounced against any Person in
 “Time to come.”

An *Idempnitatie nominis* maintainable by the Executors of a Testator wrongfully molested by colour of any Outlawry.

No. 9.

33 Henry VI. c. 1.—A Remedy for Executors against Servants that imbezzle their Master's Goods after his Death.

33 Henry VI. c. 1.

A Inst. 101.

Qu. 11 in Us.

See 33 Henry VI.

c. 7.

Rast. Ect. 29.

FIRST, our foresaid Lord the King considering how that of late Time divers Household-Servants, as well of Lords, as of other Persons of good Degree, shortly after the Death of their said Lords and Masters, violently and riotously have taken and spoiled the Goods which were of their said Lords and Masters, at the Time of their Death, and the same distributed amongst them, to the Impediment of the Execution of the Will of their said Lords and Masters, and to the great Displeasure of God, and also contrary to the Duty and Truth which they ought to have had towards their said Lords and Masters, and to a perilous example in Time to come, unless due Remedy in this Behalf be provided.—Wherefore the same Lord the King, by the Advice, Assent, and Authority aforesaid, hath ordained and established, That after full Information made to the Chancellor of England for the Time being, by the Executors of any such Lord or Person, or two of the said Executors, of such Riot, Taking, and Spoil made, or hereafter to be made, by the Household-Servants of their or his said Testator after his Death, the same Chancellor, by the Advice of the Chief Justices of the King's Bench, and of the Common Bench, and Chief Baron of the Exchequer for the Time being, or two of them, shall have power to make so many, and such Writs, to be directed to such Sheriffs by their Discretion, as to them in this Behalf shall seem necessary, to make open Proclamation in such Cities, Boroughs, Towns, or Places, two Market-Days within Twelve days next after the De-

Ex Rot. in Turr. Lond.

IN primis prefatus Dominus Rex considerans qualiter jam pridem diversi servientes familiares tam dominorum quam aliarum personarum boni gradus cito post mortem dictorum dominorum & magistrorum suorum bona que fuerunt ipsorum dominorum & magistrorum tempore mortis eorundem violenter & riotose ceperunt dispoliaverunt & ea inter se distribuerunt in executionis voluntatis dictorum dominorum & magistrorum suorum impedimentum ac gravem Dei displicentiam nec non contra fidem & veritatem quas ipsi penes dominos & magistratos suos habere debuissent exemplumque in posterum valde periculosum nisi debitum in ea parte provideatur remedium. Quamobrem idem dominus Rex de avisamento assensu & auctoritate predictis ordinavit & stabilivit quod post plenam informationem Cancellario Anglie pro tempore existenti per executores aliquorum hujusmodi dominorum sive persone aut duos eorundem executorum factam de aliqua hujusmodi riota captura & dispoliatione factis aut imposte- rum faciendis per familiares servientes dicti testatoris sui post mortem suam idem Cancellarius de avisamento Capitalium Justiciariorum de Banco ipsius Domini Regis & de commun. Banco ac Capitalis Baronis Scaccarii pro tempore existentis aut duorum eorum habeat potestatem faciendi tot & talia brevia dirigenda talibus vicecomitibus per eorum discretionem quot & qualia eis in ea parte videbuntur necessaria ad faciend' publicam proclamationem in talibus civitatibus burgis sive villis duobus diebus mercatoris infra duodecim dies prox' post deliberationem eorundem brevium

quibus eidem Cancellario de avia-
mento predictio videbitur ratioabi-
le quod dicti malefactores com-
pareant coram ipso Domino Rege
seu hereditibus suis in Banco suo
ad talem diem qualis per dictum
breve erit limitatus sic quod dicta
ultima proclamatio per quindecim
dies ante eundem diem apparitio-
nis fiat. Et si aliquod hujusmodi
breve retornatum sit ad diem in
eodem brevi contentum & breve
sit executum quod proclamatio
superinde habita & facta ordina-
tioni, predicte concordans existat
& tunc si dicte persone vel perso-
na que comparerent vel compare-
ret ratione dicte proclamationis ad
diem in dicto brevi specificatum
defaltam faciant vel faciat & non
compareant vel non compareat
ipse vel ipsa defaltam sic facientes
vel faciens sicut vel sit attinet de
felonia.

Et si hujusmodi persone vel
persona ad talem diem compare-
ant vel compareat tunc Justiciarii
de dicto Banco Domini Regia ha-
beant protestatem per ordinatio-
nem predictam committendi talem
personam vel personas sic compa-
rentem vel comparentes prisonis
ibidem juxta discretionem dicto-
rum Justiciariorum moratur
quousque dicti malefactores in
banco predicto prefatis executori-
bus respondeant in talibus actioni-
bus quales dicti executores versus
ipsos seu aliquem ipsorum per
billam vel per breve pro rona cap-
tura & dispoliatione predictis de-
clarare voluit & quod eadem ac-
tiones sint determinate. Ita quod
actiones predictae prosecuantur
cum effectu & non remittantur ex in-
tentione ad dictas personas vel
personas in prisonis custodiend.

Et si hujusmodi persone vel
persona extra prisonam per dictos
Justiciarios fuerint vel fuerit
elargit quod tunc eadem per-
sone vel persona inveniant vel
inveniat sufficientes personas se-
cum obligandas prefatis executori-
bus per viam recognitionis in
dicto Banco per discretionem
Justiciariorum ad custodiend
tales dies quales ipsa vel ipse ha-
bebit vel habebunt per eandem

livery of the same Writs, as to
the same Chaucellor, by the
Advice aforesaid, shall seem rea-
sonable, That the said Offenders
shall appear before the same our
Lord the King, or his Heirs, in
his Bench, at such a Day as by
the said Writ shall be limited,
so that the said last Proclama-
tion be made by Fifteen Days
before the same Day of Appear-
ance; and if any such Writ be
returned at the Day contained
in the said Writ, and the Writ
be executed, that Proclamation
is thereupon had and made ac-
cording to the said Ordinance,
and then if the said Person or
Persons, which should appear
by reason of the said Proclama-
tion, make Default at the Day
specified in the said Writ, and
do not appear, then he or they
so making Default shall be at-
tainted of Felony.

II. And if any such Persons
or Person do appear at the same
Day, then the Justices of the
said King's Bench shall have
Power, by the said Ordinance,
to commit such Person or Per-
sons, so appearing, to Prison,
where to remain according to the
said Justices Discretion, until
the said Offenders in the said
Bench do answer to the said
Executors in such Actions,
which the said Executors will
declare against them, or any of
them, by Bill or by Writ, for
the Riot, taking, and spoiling
aforesaid, and that the same Ac-
tions be determined; so that the
same Actions be pursued with
Effect, and not slackly, to the
Intent to keep the same Person
or Persons in Prison.

III. And if such Persons or
Person be set at Liberty out of
Prison by the said Justices, that
then the same Persons or Per-
son shall find sufficient Persons
to be bounden with them to the
said Executors, by Way of Re-
cognitione in the said Bench, by
Discretion of the Justices,
to keep such Days as he or they
shall have by the same Court;

No. 9.
33 Henry VI. c. 1.

A Gaoler's For-
feiture for setting
at Liberty a Pro-
suer committed
to his Custody by
Force of this
Statute.

No 9.
23 Henry VI. c. 1.

and if the Keepers of the Prison, whereunto the said Prison or Persons be committed, do let them go at large out of the Prison of his own Authority, without the Consideration and Order of the said Justices, then the said Keeper shall forfeit and lose forty [four hundred] Pounds to the said Executors, and that no Protection be allowed in any Action to be taken upon the said Ordinance.

Cumam. Et si custodes prisonē ubi dicte persone vel persona committentur vel committetur ipas extra prisonem auctoritate sua propria absque consideratione & ordinatione dictorum Justiciariorum clavigerint tunc dictus custos quadringentis libras pretans executoribus trahatur & perdat & quod nulla protectio in aliqui actione super ordinatione predicta capienda allocetur.

No. 10.

21 Henry VIII. c. 4.—The Sale of Lands by Part of the Executors lawful.

[Inserted ante Part II. Class I. No. 11]

No. 11.

21 Henry VIII. c. 5.—What Fees ought to be taken for Probate of Testaments.

21 Henry 8 c. 5
31 Ed 3, Stat
1, c. 1
Litch. 68.

WHERE in the Parliament holden at *Westminster*, in the Thirty-first Year of the Reign of the noble King of famous Memory, EDWARD the Third, upon the Complaint of his People for the outrageous and grievous Fines and Sums of Money taken by the Ministers of Bishops, and of other Ordinaries of Holy Church, for the Probate of Testaments, and for the Acquittances by the said Ordinaries to be made concerning the same, the said noble King in the same Parliament, openly charged and commanded the Archbishop of *Canterbury*, and the other Bishops for the Time being, that Amendment thereof should be had; and if none Amendment were thereof had, it was by the Authority of the same Parliament accorded, that the King should thereof make Inquiry by his Justices, of such Oppression and Extortions; and that the same Justices should hear and determine them as well at the Suit of the King, as of the Party, as of old Time hath been used, as by the same Statute plainly appeareth. And where at the Parliament holden at *Westminster*, in the Third Year of the Reign of King HARRY the Fifth, it was recited, That the Commons of the Realm had oftentimes complained them in divers Parliaments, for that divers Ordinaries do take for the Probation of Testaments, and other Things thereunto belonging, sometime xl s. sometime lx s. and sometimes more, against Right and Justice, where in the Time of King EDWARD the Third, Men were wont to pay for such Causes but ii s. vi d. or v. s. at the most, by which unlawful Exactions the Testaments of the Testators might not be executed according to their last Wills; it was then enacted, for the avoyding of such Oppressions, That no Ordinary from thenceforth should take for the Probation of any Testament or Inventory, or for any other Thing to the same belonging, any more than was accustomed and used in the Time of the said noble King EDWARD the

The Ordinaries
Duties for Probate
of Testaments in
the Time of King
H. 3.

Third, upon Pain to yield to the Party so grieved, Three Times as much as the said Ordinaries did so receive; which Act did endure but to the next Parliament following, by reason that the Ordinaries did then promise to reform and amend the said Oppressions and Exactions; and for that the said unlawful Exactions of the said Ordinaries, and their Ministers, be nothing reformed nor amended, but greatly augmented and increased, against Right and Justice, and to the great impoverishing of the King's Subjects:

No. 11:

of Hen. VIII. c. 25.

II. The King our Sovereign Lord, by the Assent of the Lords 4 Inst. 386.

Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, hath ordained, established, and enacted, That from the first Day of April, in the Year of our Lord M.D.XXX that nothing shall be demanded, received, nor taken by any Bishop, Ordinary, Archdeacon, Chancellor, Commissary, Official, or any other Manner of Person or Persons, whatsoever they be, which now have, or which at any Time hereafter shall have Authority or Power to take or receive Probation, Insinuation, or Approbation of Testament or Testaments, by himself, or themselves, nor by his or their Registers, Scribes, Praisers, Summoners, Apparators, or by any other of their Ministers, for the Probation, Insinuation, and Approbation of any Testament or Testaments, or for writing, sealing, praising, registering, Fines, making of Inventories, and of giving Acquittances, or for any other Manner of Cause concerning the same, where the Goods of the Testator of the said Testament, or Person so dying, do not amount clearly over and above the Value of C. s. Sterling except only to the Scribe to pay for writing of the Probate of the Testament of him deceased, whose Goods shall not be above the same clear Value of C. s. vi. d. and for the Commission of Administration of the Goods of any Man deceasing intestate, not being above like Value of C. s. clear vi. d. and that nevertheless, the Bishop, Ordinary, or other Person or Persons having Power of Authority to take or receive the Probation or Approbation of Testaments, refuse not to approve any such Testament, being lawfully tendered or offered to them to be proved or approved; whereof the Goods of the Testator, or Person so dying, amount not above the Value of C. s. Sterling, so that the said Testament be exhibited to him or them in writing, with Wax thereunto affixed ready to be sealed, and that the same Testament be lawfully proved before the same Ordinary (before the sealing) to be true, whole, and the last Testament of the same Testator, in such Form as hath been commonly accustomed in that Behalf.

The Fees for Probate of a Testament, where the Goods exceed not the Value of C. 50.

Commission of Administration where the Goods exceed not the Value of C. 5.

III. And when the Goods of the Testator do amount over and above the clear Value of C. s. and do not exceed the Sum of xl. l. Sterling; that then no Bishop, Ordinary, nor other Manner of Person or Persons, whatsoever he or they be, now having, or which hereafter shall have, Authority to take Probation or Approbation of any Testament or Testaments, as is aforesaid, by themselves, nor any of their said Registers, Scribes, Praisers, Summoners, Apparators, nor any other their Ministers, for the Probation, Insinuation, and Approbation of any Testament or Testaments, or for the registering, sealing, writing, praising, making of Inventories, giving of Acquittances, Fines, or any other Thing concerning the same, shall take, or cause to be taken of any Person or Persons but only Three Shillings vi. d. and not above, whereof to be to the said Bishop or Ordinary, or to any other Person or Persons having Power and Authority to take the Probation or Approbation of any Testament or Testaments, for him and his Ministers, vi. s. vi. d. and not above, and xii. d. Residue of the said iii. s. vi. d. to be to the Scribe for the registering of the same; and where the Goods of the Testator, or Person or Persons so dying, do amount over and above the clear Value of xl. l. Sterling, that then the Bishop nor Or-

The Fees of the Probate of a Testament, where the Goods do exceed C. 50. and not xl. l.

2 Roll. 158, 263, 449.

The Fees of the Probate of a Testament, where the Goods do exceed

No. 11.
21 Hen. VIII. c. 8.

dingly, nor other Person or Persons, now having, or which hereafter shall have Authority or Power to take Probate of Testaments, as is aforesaid, by him or themselves, nor any of his or their said Registers, Scribes, Praisers, Summoners, Apparators, or any other their Ministers, for the Probation, Insinuation, and Approbation of any Testament or Testaments; or for the registering, sealing, writing, praising, making of Inventories, Fines, giving of Acquittances, or any Thing concerning the same Probate of a Testament, shall from the First Day of April, take, or cause to be taken of any Person or Persons, but only *v. s.* and not above, whereof to be to the said Bishop, Ordinary, or other Person having Power to take the Probation of such Testament or Testaments, for him and his Ministers *ii. s. vi. d.* and not above, and *ii. s. vi. d.* Residue of the said *v. s.* to be to the Scribe for registering of the same; or else the same Scribe to be at his Liberty to refuse those *ii. s. vi. d.* and to demand and have for writing of every Ten Lines of the same Testament, whereof every Line to contain in Length Ten Inches, *z. d.* and that every such Bishop or Ordinary, and other Person or Persons so having, or which hereafter shall have Authority or Power to take or receive the Probation or Approbation of any Testament or Testaments, as is abovesaid, their Registers, Scribes, and Ministers shall approve, insinuate, seal, and register, from Time to Time, the said Testaments, and deliver the same sealed with the Seal of their Office, to the Executor or Executors named in any such Testaments, for the said Sum or Sums abovesaid, and in Manner and Form as is above rehearsed, to deliver it with convenient Speed, without any frustratory Delay; and in Case any Person die intestate, or that the Executors named in any such Testament refuse to prove the said Testament, then the said Ordinary, or other Person or Persons having Authority to take Probate of Testaments, as is abovesaid, shall grant the Administration of the Goods of the Testator, or Person deceased, to the Widow of the same Person deceased, or to the next of his Kin, or to both, as by the Discretion of the same Ordinary shall be thought good, taking Surety of him or them, to whom shall be made such Commission, for the true Administration of the Goods, Chattels, and Debts, which he or they shall be so authorized to minister; and in Case where divers Persons claim the Administration as next of Kin, which be equal in Degree of Kindred to the Testator or Person deceased, and where any Person only desireth the Administration as next of Kin, where indeed divers Persons be in Equality of Kindred, as is aforesaid, that in every such Case the Ordinary to be at his Election and Liberty to accept any one or more making Request, where divers do require the Administration.*

Testaments shall
be sealed and de-
livered without
Delay.

Hob. 250.
Administration
granted of the
Goods of the In-
testate
1 Salk. 36.
Moore 871. pl.
1210. Bro. Ad-
min. 47. 3 Co.
40. 9 Co. 39.
Cro. El. 163.
Cro. Car. 9, 106.

To whom Ad-
ministration shall
be granted

IV. Or where but one or more of them, and not all being in Equality of Degree, do make Request, then the Ordinary to admit the Widow, and him or them only making Request, or any One of them at his Pleasure, taking Nothing for the same, unless the Goods of the Persons so deceased amount above the Value or Sum of *C. s.* and in Case the Goods of the Person so deceased amount to above the Value of *C. s.* and not above the Value or Sum of *x. li.* then the said Bishop, Ordinary, or other Person or Persons so having Authority to take Probate of Testaments, as is aforesaid, their Ministers and Officers shall take only *ii. s. vi. d.* Sterling, and not above; and that the Executor and Executors named by the Testator, or Person so deceased, or such other Person or Persons to whom such Administration shall be committed where any Person dieth intestate, or by way of intestate, calling or taking to him or them such Person or Persons, Two at the least, to whom the said Person so dying was indebted, or made any Legacy;

How much the
Ordinary shall
take
3 Inst. 148.

and upon their Refusal or Absence, Two other honest Persons, being next of Kin to the Person so dying, and in their Default and Absence, Two other honest Persons, and in their Presence; and by their Discretions, shall make, or cause to be made, a true and perfect Inventory of all the Goods, Chattels, Wares, Merchandises, as well moveable as not moveable whatsoever, that were of the said Person so deceased, and the same shall cause to be indented, whereof the One Part shall be by the said Executor or Executors, Administrator or Administrators, upon his or their Oath or Oaths, to be taken before the said Bishops, or Ordinaries, their Officials, or Commissaries, or other Persons having Power to take Probate of Testaments, upon the Holy Evangelists, to be good and true, and the same One Part indented shall present and deliver into the keeping of the said Bishop, Ordinary, or Ordinaries, or other Person having Power to take Probate of Testaments, and the other Part thereof to remain with the said Executor or Executors, Administrator or Administrators; and that no Bishop, Ordinary, or other whatsoever Person, having Authority to take Probate of Testament or Testaments, as is aforesaid, upon the Pain in this Statute hereafter contained, refuse to take any such Inventory or Inventories to him or them presented or tendered to be delivered as is aforesaid.

V. Provided always, That if the Person so deceased will by his Testament, or last Will, any Lands, Tenements, or Hereditaments, to be sold, that the Money thereof coming, nor the Profits of the said Lands, for any Time to be taken, shall not be accounted as any of the Goods or Chattels of the said Person so deceased; and that the same Bishop, Ordinary, or other Person or Persons, having Authority to take Probate of Testament or Testaments, as is aforesaid, upon the Delivery of the Seal and Sign of the Testator, do cause the same Seal to be defaced, and thereupon incontinent redeliver the same Seal unto the said Executor or Executors, without Claim or Challenge thereunto to be made. And in Case any Person or Persons, at any Time hereafter, require a Copy or Copies of the said Testament so proved, or of the said Inventories so made, that then the said Ordinary or Ordinaries, and the other Persons having Authority to take Probate of Testaments, or their Ministers, shall from Time to Time with convenient Speed, without any frustratory Delay, deliver, or cause to be delivered, a true Copy or Copies of the same, to the said Person or Persons so demanding them; or any of them, taking for the Search, and for the making of the Copy of either of the said Testament or Inventory, but only such Fee as is before rehearsed for the registering of the said Testament; or else the Scribe or Register to be at his Election and Liberty to demand, have, and take for every Ten Lines thereof, being of the Proportion before rehearsed, i. d.

VI. Provided always, That where any Person or Persons having Power or Authority to take Probate of Testaments, have used to take less Sums of Money than is above said, for the Probate of Testaments, or Commissions of Administrations, or other Cause concerning the same, shall take and receive such Sum or Sums of Money for the Probate of Testaments and Commissions of the Administrations, and other Causes concerning the same, as they before the making of this Act have used to take, and not above.

VII. And it is enacted, That every Bishop, Ordinary, Archdeacon, Chancellor, Commissary, Official, and other Person or Persons having, or which hereafter shall have Authority to take Probate of Testaments, their Registers, Scribes, Clerks, summoners, Appraisers, and all other their Ministers whatsoever they be, that shall do or attempt, or cause to be done or attempted, against this Act or Ordinance in any Thing, shall forfeit and lose for every Time so offend-

No. 11.
21 Hen VIII. c. 5.

Inventory, by whom it shall be made, &c
1 Roll. 358.

See 3 Bur. 1928

Profits of Lands to be sold shall not be accounted the Testator's Goods
Dyer 264, 310.
Fitz. Exec. 1.
37, 51.

The Testator's Seal shall be defaced.

Fee for Search and Copies.

Custom to take less Money for Probate than is aforesaid.

Forfeiture of the Ordinary, &c.

No. 11.
1 Hen VIII c. 5.
Co. pl. f. 166.
Rast. pl. f. 603.

ing; to the Party grieved in that Behalf, so much Money as any such Person abovesaid shall take contrary to this present Act; and over that shall lose and forfeit *x. li* Sterling; whereof the One Moiety shall be to the King our Sovereign Lord, and the other Moiety to the Party grieved in that Behalf, that will sue by Action of Debt, Bill, Information, or otherwise in any of the King's Courts, for the Recovery of the same; in which Action no Essoin, Protection, nor Wager of Law shall be admitted or allowed. And that every of the same Bishops, and other Persons, which shall hereafter incur or fall into the Dangers of such Penalty or Forfeiture, shall be charged only by himself, and none of them to be chargeable to that Penalty for other's Offence

An Ordinary may convene Executors to prove the Testator's Will, and to bring in their Inventory.

VIII Provided alway, That this present Act be not prejudicial to any Ordinary, or any other Person, which now have, or hereafter shall have Authority for Probate of Testaments, but that every of them shall and may convene before them all and every Person or Persons made and named Executor or Executors of any Testament to the Intent to prove or refuse the Testament or Testaments of their Testator or Testators, and to bring in Inventories, and to do every other Thing concerning the same, as they might do before the making of this Act; so that always any such Ordinary, or other Person or Persons having such Authority, by themselves, their Commissaries, Scribes, Registers, or other Ministers aforesaid, shall not in any wise take for the same above the Fees limited by this Act, nor in any wise attempt any Thing contrary to any Part of the same Act.

No. 12.

32 Henry VIII. c. 37.—For Recovery of Arrearages of Rents by Executors of Tenant in Fee-simple.

[Inserted Part IV. Class XIX.]

No. 13.

43 Elizabeth, c. 8.—An Act against fraudulent Administration of Intestates Goods.

43 Eliz c. 8.

Practised in taking of Administrations to deceive others of their lawfull Debts.

FORASMUCH as it is often put in Use, to the defrauding of Creditors, that such Persons as are to have the Administration of the Goods of others dying Intestate, committed unto them, if they require it, will not accept the same, but offer or procure the Administration to be granted to some Stranger of mean Estate, and not of Kin to the Intestate; from whom themselves or others by their Means do take Deeds of Gifts and Authorities by Letter of Attorney, whereby they obtain the State of the Intestate into their Hands, and yet stand not subject to pay any Debts owing by the same Intestate, and so the Creditors for lack of Knowledge of the Place of Habitation of the Administrator, cannot arrest him nor sue him; and if they fortune to find him out, yet for lack of Ability in him to satisfy of his own Goods for the Value of that he hath conveyed away of the Intestate's Goods, or released of his Debts by Way of Wasting, the Creditors cannot have or recover their just and due Debts.

II. Be it enacted by the Authority of this present Parliament, That every Person and Persons that hereafter shall obtain, receive and have any Goods or Debts of any Person dying Intestate, or a Release or other Discharge of any Debt or Duty that belonged to the Intestate, upon any Fraud, as is aforesaid, or without such valuable Consideration as shall amount to the Value of the same Goods or Debts, or near thereabouts, (except it be in or towards Satisfaction of some just and principal Debt, of the Value of the same Goods or Debts to him owing by the Intestate at the Time of his Decease) shall be charged and chargeable as Executor of his own Wrong; and so far only as all such Goods and Debts coming to his Hands; or whereof he is released or discharged by such Administrator, will satisfy, deducting nevertheless to and for himself Allowance of all just, due and principal Debts upon good Consideration, without Fraud, owing to him by the Intestate at the Time of his Decease, and of all other Payments made by him, which lawful Executors or Administrators may and ought to have and pay by the Laws and Statutes of this Realm.?

No. 13.

43 Eliz. c. 8.

By fraudulent Administration of Intestate's Goods, the Party shall be charged as Executor of his own Wrong.

Allowance of just Debts and other lawful Payments.

* This Statute does not give an Executor *de son tort*, Power to retain.—*Semble* Vernon v. Curtis, 2 H. B. 26, n.

No. 14.

17 Charles II. c. 8.—An Act for avoiding unnecessary Suits and Delays.

[Inserted Part IV. Class XII.]

No. 15.

22 & 23 Charles II. c. 10. (6).—An Act for the better Settling of Intestate Estates.

BE it enacted by the King's most Excellent Majesty, with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all Ordinaries, as well the Judges of the Prerogative Courts of *Canterbury* and *York* for the Time being, as all other Ordinaries and Ecclesiastical Judges, and every of them, having Power to commit Administration of the Goods of Persons dying intestate, shall and may upon their respective granting and committing of Administration of the Goods of Persons dying intestate, after the First Day of June, One Thousand Six Hundred Seventy and One, of the respective Person or Persons to whom any Administration is to be committed, take sufficient Bonds with Two or more able Sureties, Respect being had to the Value of the Estate, in the Name of the Ordinary, with the Condition in Form and Manner following, *mutatis mutandis*, viz.

22 & 23 Chas. II. c. 10.

All Ordinaries who have Power to grant Administrations, have Power to take Bonds, Vaughan 90.

II THE Condition of this Obligation is such, That if the within-
bounden A. B. Administrator of all and singular the Goods,
Chattels, and Credits of C. D. deceased, do make or cause to be
made, a true and perfect Inventory of all and singular the Goods,
Chattels, and Credits of the said Deceased, which have or shall come
to the Hands, Possession or Knowledge of him the said A. B. or in-
to the Hands and Possession of any other Person or Persons for him,
and the same so made do exhibit or cause to be exhibited into the

The Condition of the Bonds.

No. 15.
22 & 24 Chas II.
c. 10.

1 Salk. 315,
316.

‘ Registry of Court, at or before the Day of
‘ next ensuing; and the same Goods, Chattels, and Credits, and all
‘ other the Goods, Chattels, and Credits of the said Deceased at the
‘ Time of his Death, which at any Time after shall come to the Hands
‘ or Possession of the said *A. B.* or into the Hands and Possession of
‘ any other Person or Persons for him, do well and truly administer
‘ according to Law; And further do make, or cause to be made, a
‘ true and just Account of his said Administration, at or before the
‘ Day of And all the Rest and Residue of the said
‘ Goods, Chattels, and Credits which shall be found remaining upon
‘ the said Administrator’s Account, the same being first examined and
‘ allowed of by the Judge or Judges for the Time being of the said
‘ Court, shall deliver and pay unto such Person or Persons respectively,
‘ as the said Judge or Judges by his or their Decree or Sentence, pur-
‘ suant to the true Intent and Meaning of this Act, shall limit and ap-
‘ point. And if it shall hereafter appear, That any last Will and Tes-
‘ tament was made by the said Deceased, and the Executor or Execu-
‘ tors therein named do exhibit the same into the said Court, making
‘ Request to have it allowed and approved accordingly, if the said *A.*
‘ *B.* within-bounden, being thereunto required, do render and deliver
‘ the said Letters of Administration, (Approbation of such Testament
‘ being first had and made) in the said Court; then this Obligation to
‘ be void and of none Effect, or else to remain in full Force and
‘ Virtue ‘(1)

Ordinaries have
Power to call Ad-
ministrators to
Account in to
make Distribution,
&c.

III. Which Bonds are hereby declared and enacted to be good to
all Intents and Purposes, and pleadable in any Courts of Justice: And
also that the said Ordinaries and Judges respectively shall and may and
are enabled to proceed and call such Administrators to account, for
and touching the Goods of any Person dying intestate; and upon
Hearing and due Consideration thereof, to order and make just and
equal Distribution of what remaineth clear (after all Debts, Funerals,
and just Expences of every Sort, first allowed and deducted) amongst
the Wife and Children, or Childrens Children, if any such be, or
otherwise to the next of Kindred to the dead Person in equal Degree,
or legally representing their Stocks *pro suo cuique jure*, according to
the Laws in such Cases, and the Rules and Limitation hereafter set
down; and the same Distributions to decree and settle, and to compel
such Administrators to observe and pay the same, by the due Course
of his Majesty’s Ecclesiastical Laws; Saving to every one, supposing
him or themselves aggrieved, their Right of Appeal as was always in
such Cases used.

Customs
don and
red.
Explained by 1
Jac. 2, c. 17, sec.
“
Skinner 26.

IV. Provided, That this Act or any Thing herein contained,
shall not any ways prejudice or hinder the Customs observed within
the City of London, or within the Province of York, or other Places,
having known and received Customs peculiar to them, but that the

(1) The Bond is forfeited by not bringing in the Account according to the
Condition, although there be no Citation, but not for the Non-payment of a
Debt of the Intestate.—*Archbishop of Canterbury v. Wills*, 1 Salk. 315. A
Judgment upon an Administration Bond obtained at the Instance of a Creditor
to whom it was assigned, was decreed to stand as a Security for what was due
to the Creditor so far as the Assets would extend and Costs.—*Greenside v. Ben-
son*, 3 Atk. 248, as corrected by Saunders, Note, *ibid.* from the Register’s
Book—that a Creditor may sue on the Bond in the Name of the Ordinary by
his Authority given, not personally but by the proper Court.—See *Archbishop
of Canterbury v. House*, Cowp. 140.

The Bond directed by the Statute does not extend to the Case of an Ad-
ministration during Minority, but such Bond may be good at Common Law.—
Folkes v. Dorminque, 2 Str. 1137. So in Case of Administration *pendente
lite*—*Wallis v. Pipon*, Amb. 183.

same Customs may be observed as formerly; any Thing herein contained to the contrary notwithstanding.

No. 15.

22 & 23 Chas. II.
c. 10.

V. Provided always, and be it enacted by the Authority aforesaid, That all Ordinaries and every other Person who by this Act is enabled to make Distribution of the Surplusage of the Estate of any Person dying Intestate, shall distribute the whole Surplusage of such Estate or Estates in Manner and Form following; That is to say, One Third Part of the said Surplusage to the Wife of the Intestate, and all the Residue by equal Portions, to and amongst the Children of such Persons dying intestate, and such Persons as legally represent such Children, in Case any of the said Children be then dead, (2) other than such Child or Children (not being Heir at Law) who shall have any Estate by the Settlement of the Intestate, or shall be advanced by the Intestate in his Life-time, by Portion or Portions equal to the Share which shall by such Distribution be allotted to the other Children to whom such Distribution is to be made: And in Case any Child, other than the Heir at Law, who shall have any Estate by Settlement from the said Intestate, or shall be advanced by the said Intestate in his Life-time by Portion not equal to the Share which will be due to the other Children by such Distribution as aforesaid; Then so much of the Surplusage of the Estate of such Intestate, to be distributed to such Child or Children as shall have any Land by Settlement from the Intestate, or were advanced in the Life-time of the Intestate, as shall make the Estate of all the said Children to be equal as near as can be estimated: But the Heir at Law, notwithstanding any Land that he shall have by Descent or otherwise from the Intestate, is to have an equal Part in the Distribution with the rest of the Children, without any Consideration of the Value of the Land which he hath by Descent, or otherwise from the Intestate. (3)

How, and to whom
the Surplusage is
to be distributed.

2 Mod. 20, 101.

3 Mod. 58.

1 Vern. 465.

Advancement by
Portion.

4 Shower 25.

Heir at Law to
have an equal
Part.

(2) If there be only living Children and no Issue of Children deceased, all the Children take equally, if there be no Children living, all the Issue of deceased Children take equally in their own Right, and *per Capita*—if there are Children living and the Issue of Children deceased, they take *per Stirpes*—the Issue of the deceased Children taking only their Parents' Shares.—An only Child takes two thirds against the Wife.—Skinner 212.

(3) Portions secured for Children by Settlement on the Marriage of the Parents are to be brought into Hotchpot—*Phiney v. Phiney*, 2 Vern. 638.—*Edwards v. Freeman*, 2 P. Wms. 435, and this although the Provision be contingent at the Father's Death—*Edwards v. Freeman*; but a Provision by Will of Lands or personal Estate in Case of a partial Intestacy shall not—*Scoble Edwards v. Freeman*: so *Twisden v. Twisden*, 9 Vesey, 425.—The Collation only takes Place in Case of actual Intestacy and not where there is a complete Will, and the Executor is a Trustee for the next of Kin—*Walton v. Walton*, 14 Vesey, 324.—Land given to any Child other than the Heir, is an Advancement by the express Provision of the Statute.—*Fr. Edwards v. Freeman*.—If, upon the Marriage of a Son, a Settlement is made upon such Son for his Life and afterwards upon his Wife and the Issue of the Marriage, the whole Sum, and not merely the Value of the Interest, must be brought into Hotchpot—*Wayland v. Wayland*, 2 Atk. 633.—It has been determined that small inconsiderable Sums occasionally given to a Child cannot be deemed an Advancement.—Thus Maintenance Money, or an Allowance to a Son at the University or in Travelling, is not to be taken as any Part of his Advancement, this being only for his Education.—So putting out a Child Apprentice is no Advancement—*Hender v. Rose* at the Rolls, Trin. 1718.—But the Father buying an Office for the Son, though but at Will, or a Commission in the Army, are Advancements—*Norton v. Norton*, 3 Peter Wms. 317; N. This was ruled as to the Case of buying a Commission—*Lord Kirkubright v. Lady Kirkubright*, 8 Vesey, 51. An Annuity or other contingent Interest is an Advancement; let the Contingency be what they may they do not prevent the Value. An Opinion was given to the Son to account for the Value of the Annuity or the yearly Payments under the peculiar Circumstances, S. C.—The

No. 15.
22 & 23 Chas. II.
c. 10.
1 Ven. 316.

If no Wife,
amongst the
Children.

1 Salk. 250.
Raymord 496.
Carthew 51.
Jones, Sir Tho.

93.
2 Ver. 169, 170,
233.

VI. And in Case there be no Children nor any legal Representatives of them, then one Moiety of the said Estate to be allotted to the Wife of the Intestate, the Residue of the said Estate to be distributed equally to every of the next of Kindred (4) of the Intestate, who are in equal Degree, and those who legally represent them. (5)

VII. Provided, That there be no Representations admitted among Collaterals after Brothers and Sisters Children: (6) And in Case there be no Wife, then all the said Estate to be distributed equally to and amongst the Children: And in Case there be no Child, then to the next of Kindred in equal Degree of or unto the Intestate, and their legal Representatives as aforesaid, and in no other Manner whatsoever.

Use of Furniture for Life; ruled an Advancement—Fitzgibb 285.—An Advancement to the Heir otherwise than Land must be brought into Hotchpot—Phiney v. Phiney, 2 Vern. 638.—Lord Kirkudbright v. Lady Kirkudbright, *ub. sup.*

In Pratt v. Pratt, 2 Sir. 35, it was held that Lands in Borough English descending upon a younger Son must be brought into Hotchpot, but the contrary was ruled by Lord Talbot, in Lutwyche v. Lutwyche, and the Judgment of Pratt v. Pratt, was afterwards reversed by him.—Temp. Talbot 276. Money expended in the Repairs of Houses which descended to the Heir is no Advancement, otherwise if the Houses had been previously given to the Heir—Smith v. Smith, 5 Ves. 721. The Collation is wholly for the Benefit of the Children and not of the Widow—Lord Kirkudbright v. Lady Kirkudbright.—The Statute does not apply to Advancements by a Mother—Holt v. Frederick, 2 P. Wms. 356.

(4) The Cases of Wife and Children or Representatives of Children being provided for as above, the Order of Distribution is as follows:—1st. The Father.—2d. The Mother, (see St. 1, § 2, post.) Brothers and Sisters, and Children of deceased Brothers and Sisters taking by Representation. (The Children of deceased Brothers and Sisters take with the Mother; although there be no Brothers or Sisters living, but the Representation is not carried further by Stat. 1 James II. any more than by 13 & 14 Charles II.—Stanley v. Stanley, 1 Atk. 455).—3d. Grandfather and Grandmother—(these are nearer in Degree than the Children of deceased Brothers and Sisters, taking in their own Right, there being no Brother or Sister living, and not by Representation, and would therefore seem entitled to take in Exclusion of the Nephews and Nieces, although they would be themselves excluded where the Nephews and Nieces take with Brothers and Sisters by Representation—but I do not find the Case noticed, and there would be an apparent incongruity, in the Children of deceased Children taking equally with the Mother, as in Stanley v. Stanley, and being excluded by a more remote Relation.—The Case of there being both Grandfather and Grandmother in one Line, and only one of those Relatives in the other, does not appear to have been noticed—but the Grandmother whose Husband is living is equally related to the deceased with her Husband or the surviving Grandfather or Grandmother in the other Line.) 4th. Great Grandfather, Uncle, Nephew.—5th. Great Grandfather's Father, Great Uncle, Great Nephew, Cousin German.—6th. Great Great Uncle, Great Uncle's Son, Son of Cousin German.

The half Blood take equally with the whole Blood in the same Degree.

A Child *en ventre sa mere*, is considered as in *Etate*—Burn's Eccles. L. Tit. *Wills Distribution*.

(5) By the Statute of Frauds, 29 C. 2, c. 3, s. 25, C. ante. Part II. Class 1, Nothing in this Statute shall extend to the Estates of Feme Coverts that shall die intestate, but their Husbands may have Administration of their personal Estates and recover and enjoy the same as if this Act had not passed, and the Husband's Right of Administration and Distribution are transmissible to his Representatives, and do not go to the next of Kin of the Wife—Elliott v. Taylor, 1 Wils. 169.—Humphrey v. Bullen, 1 Atk. 458.—The Husband does not take under a Disposition to the next of Kin of the Wife—Watt v. Watt, 3 Vesey 244, and see Anderson v. Dawson, 15 Vesey 537. Brothers and Sisters or their Representatives take an equal Share with the Mother.—See 1 James 2, c. 17, post.

(6) It is fully settled that the Representation by this Clause is confined to Children of the Brothers and Sisters of the deceased.—Also that it does not extend to the Grand Children of Brothers and Sisters.

VIII. Provided also, and be it likewise enacted by the Authority aforesaid, To the End that a due Regard be had to Creditors, that no such Distribution of the Goods of any Person dying Intestate be made till after One Year be fully expired after the Intestate's Death, (7) and that such and every One to whom any Distribution and Share shall be allotted, shall give Bond with sufficient Sureties in the said Courts, that if any Debt or Debts truly owing by the Intestate shall be afterwards sued for and recovered, or otherwise duly made to appear; that then and in every such Case he or she shall respectively refund and pay back to the Administrator his or her rateable Part of that Debt or Debts, and of the Costs of Suit and Charges of the Administrator by reason of such Debt, out of the Part and Share so as aforesaid allotted to him or her, thereby to enable the said Administrator to pay and satisfy the said Debt or Debts so discovered after the Distribution made as aforesaid.

No. 15.
22 & 23 Clms. II.
c. 10.

No Distribution
till after One
Year.

If Debts after-
wards appear, then
all to refund pro-
portionably.

IX. Provided always, and be it enacted by the Authority aforesaid, That in all Cases where the Ordinary hath used heretofore to grant Administration *cum Testamento annexo*, he shall continue so to do, and the Will of the deceased in such Testament expressed shall be performed and observed in such Manner as it should have been if this Act had never been made.

Act not to extend
to Administration
*cum Testamento
annexo.*

X. Provided also, That this Act shall continue in Force for Seven Years, and from thence to the End of the next Session of Parliament, and no longer. [29 Car. 2. c. 3. § 25. 30 Car. 2. Stat. 1. c. 6. made perpetual by 1 Jac. 2 c. 17. § 5.]

(7) But the next of Kin have a vested Interest immediately on the Decease of the Intestate—*Earl of Winchelsea v. Norcliffe*, 1 Vern. 403.

No. 16.

13 Charles II. c. 3.—An Act for the Prevention of Frauds and Perjuries.

[Inserted Part II. Class I. No. 17.]

No. 17.

30 Charles II. c. 7.—An Act to enable Creditors to recover their Debts of the Executors and Administrators of Executors in their own Wrong.

WHEREAS the Executors and Administrators of such Persons who have possessed themselves of considerable personal Estates of other dead Persons, and converted the same to their own Use, have no Remedy by the Rules of the Common Law, as it now stands, to pay the Debts of those Persons whose Estate hath been so converted by their Testator or Intestate, which hath been found very mischievous, and many Creditors defeated of their just Debts, although their Debtors left behind them sufficient to satisfy the same, with a great Overplus:

30 Charles II. c. 7.

II. For Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority thereof, That all and every the Exe-

3 Mod. 113.

No. 17.
30 Charles II. c. 7

cutors and Administrators of any Person or Persons, who as Executor or Executors in his or their own Wrong, or Administrators, shall, from and after the First Day of August next ensuing, waste or convert any Goods, Chattels, Estate, or Assets of any Person deceased, to their own Use, shall be liable and chargeable in the same Manner as their Testator or Intestate would have been if they had been living. This Act to continue in Force for Three Years, and from thence to the End of the next Session of Parliament, and no longer. [Made perpetual and enlarged by 4 & 5 W. and M. c. 24. § 12.]

1 Jac. 2. c. 17.

No. 18.

19.

1 James II. c. 17.—An Act for reviving and Continuance of several Acts of Parliament therein mentioned.

1 Jac. II. c. 17.

17 Car 2 c. 8
and 22 an 1 23 Car.
2 c. 10. are to per-
petual.

Explanatory
Clause in 29 Car.
2. c. 3. sec. 25. of
22 & 23 C. 2. c.
10.

Administrator
compellable to ac-
count only to Per-
sons interested.

Brother and Sis-
ter shall share
equally with the
Mother.

Customs of Lon-
don and Province
of York, &c.

V. And be it enacted by the Authority aforesaid, That One other Act made in the Seventeenth Year of his said late Majesty's Reign, intituled, *An Act for avoiding unnecessary Suits and Delays*: And also One other Act made in the Two and twentieth and Three and twentieth Years of his late Majesty's Reign, intituled, *An Act for the better settling Intestate Estates*, (which said latter Act is explained by a Clause in one other Act made in the Nine and twentieth Year of his said Majesty's late Reign, intituled, *An Act for Prevention of Frauds and Perjuries*.) both which said Acts, with the said Clause, are continued by One other Act made in the Thirtieth Year of his said late Majesty's Reign, intituled, *An Act for reviving both the said former Acts*. All which said Acts and Clauses shall be in Force, and is hereby made perpetual.

VI. Provided always, and it is hereby further enacted, That no Administrator shall, from the Four and twentieth Day of July next, be cited to any the Courts in the said last Act mentioned, to render an Account of the Personal Estate of his Intestate (otherwise than by an Inventory or Inventories thereof) unless it be at the Instance or Prosecution of some Person or Persons in Behalf of a Minor, or having a Demand out of such Personal Estate as a Creditor or next of Kin, nor to be compellable to account before any the Ordinaries or Judges by the said last Act empowered and appointed to take the same, otherwise than as is aforesaid; any Thing in the said last Acts contained to the contrary notwithstanding.

VII. Provided also, and it is further enacted by the Authority aforesaid, That, if, after the Death of a Father, any of his Children shall die intestate without Wife or Children, in the Lifetime of the Mother, every Brother and Sister, and the Representatives of them, shall have an equal Share with her; any Thing in the last mentioned Acts to the contrary notwithstanding.

VIII. Provided, and it is hereby, for the determining some Doubts arising upon the Acts aforesaid, for the better settling Intestate Estates, enacted and declared, That the Clause (herein, by which it is provided, that that Act, or any Thing therein contained, should not in any ways prejudice or hinder the Customs observed within the city of London, and province of York, was never intended, nor shall be taken or construed to extend, to such Part of any Intestate's Estate, as any Administrator, by virtue only of being Administrator, by Preience or

§ Or is to be construed as and, and the Mother, though there be a Wife, takes an equal Share. *Keylway v. Keylway*. 2 P. Wms. 344. *Stanley v. Stanley*, 1 Alk. 457.

Reason of any Custom, may claim to have, to exempt the same from Distribution, but that such Part in the Hands of such Administrator shall be subject to Distribution as in other Cases within the said Act.

No. 18.
1 James II. c. 17.

No. 19.

4 William and Mary, c. 2.—An Act that the Inhabitants of the Province of *York* may dispose of their Personal Estates by their Wills, notwithstanding the Custom of that Province.

WHEREAS by Custom within the Province of *York*, or other Usage, the Widows and younger Children of Persons dying Inhabitants of that Province, are entitled to a Part of the Goods and Chattels of their late Husbands and Fathers (called her and their reasonable Part), notwithstanding any Disposition of the same by their Husbands and Fathers last Wills and Testaments, and notwithstanding any Jointures made for the Livelihood of the said Widows by their Husbands in their Lifetime, which are competent, and according to Agreement, whereby many Persons are disabled from making sufficient Provision for their younger Children: For Remedy whereof;

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That, from and after the Six and twentieth Day of *March*, One thousand six hundred ninety and three, it shall and may be lawful for any Person or Persons, inhabiting or residing, or who shall have any Goods or Chattels within the Province of *York*, by their last Wills and Testaments, to give, bequeath, and dispose of all and singular their Goods, Chattels, Debts, and other Personal Estate, to their Executor or Executors, or to such other Person or Persons as the said Testator or Testators shall think fit, in as large and ample Manner, as by the Laws and Statutes of this Realm any Persons or Persons may give and dispose of the same within the Province of *Canterbury*, or elsewhere: And that from and after the said Six and twentieth Day of *March*, One thousand six hundred ninety and three, the Widows, Children, and other the Kindred of such Testator or Testators, shall be barred to claim or demand any Part of the Goods, Chattels, or other Personal Estate of such Testator or Testators, in any other Manner than as by the said last Wills and Testaments is limited and appointed; any Law, Statute, or Usage to the contrary in any wise notwithstanding.

Persons within the Province of *York* may dispose by Will of all their Personal Estate.

III Provided always, That nothing in this Act contained shall extend, or be construed to extend, to the Citizens of the Cities of *York* and *Chester*,* who are or shall be Freemen of the said respective Cities, inhabiting therein, or within the Suburbs thereof, at the Time of their Death, but that every such Citizen's Widow and Children

* The Exception as to *York* is repealed by Statute 2 & 3 Anne, c. 5.—With respect to *Chester*, there has not been any Repeal, but the Exception itself is negatory; as the Archdeaconry of *Chester*, within which the City of *Chester* is situate, is Part of the ancient Diocese of *Lichfield* and *Coventry*, to which the Custom of the Province of *York* never applied; and was incorporated with the Archdeaconry of *Richmond*, in the Diocese of *York*, to form the new-created Diocese of *Chester*, by Statute 33 Hen. VIII. c. 31.

No. 19. shall and may have and enjoy such reasonable Part and Proportion of
4 W. & M. c. 2. of the Testators Personal Estate, as she or they might or ought to have had by the Custom of the Province of York, before the making of this Act.

No. 20.

39. 4 & 5 William and Mary. c. 24.—An Act for continuing, and explaining several Laws therein mentioned, which are expired and near expiring.

4 & 5 W. & M. c. 24

30 Car. 2. st 1
c. 7. continued by
1 Jac. 2. c. 17
sec. 14 hereby
made perpetual
Devastavit against
Executors by
Right,

XII. And be it further enacted by the Authority aforesaid, That an Act made in the Thirtieth Year of the Reign of King Charles the Second, intituled, *An Act to enable Creditors to recover their Debts of the Executors and Administrators of Executors in their own Wrong*; which said Act, in the First Year of the Reign of the late King James, the Second, was enacted to be in Force from the First Day of the then present Session of Parliament, and to continue for Seven Years, and from thence to the End of the First Session of the then next Parliament, shall be and is hereby continued and made perpetual. And forasmuch as it hath been a Doubt whether the said Act did extend to any Executor or Executors, Administrator or Administrators of any Executor or Administrator of Right, who, for Want of Privy in Law, were not before answerable, nor could be sued for the Debts due from or by the First Testator or Intestate, notwithstanding that such Executors or Administrators had wasted the Goods and Estate of the First Testator or Intestate, or converted the same to his or their own Use: For Remedy whereof, be it further enacted and declared by the Authority aforesaid, That all and every the Executor and Executors, Administrator or Administrators of such Executor or Administrator of Right, who shall waste or convert to his own Use, Goods, Chattels, or Estate of his Testator or Intestate, shall from henceforth be liable and chargeable in the same Manner as his or their Testator or Intestate should or might have been, any Law or Usage to the contrary notwithstanding.

No. 21.

7 & 8 William III. c. 38. — An Act to take away the Custom of Wales, which hinders Persons from disposing their Personal Estates by their Wills.

7 & 8 W. III. c. 38.

WHEREAS in several Counties and Places within the Principality of Wales, and Marches thereof, the Widows and younger Children of Persons dying Inhabitants therein, have often claimed and pretended to be intitled to a Part of the Goods and Chattels of their late Husbands or Fathers, called her and their reasonable Part, by Virtue or Colour of a Custom or other Usage within the said Principality and Marches thereof, notwithstanding any Disposition of the same by their Husbands and Fathers last Wills and Testaments, or by Deed in their Lives Time, and notwithstanding a competent Jointure according to the Agreement made for the Livelihood of the said Widows by their Husbands, which have often occasioned great Troubles, Disputes, and Expences, about and concerning such Custom and Usage, whereby many Persons have

‘ been and are disabled from making sufficient Provision for their Families, younger Children, and Relations, and great Disputes, Troubles, and Expences have often happened concerning the same, to the great Damage or Ruin of many.’ For Remedy whereof, and for preventing all Questions, Doubts and Difficulties for the future touching the said Custom and Usage, be it enacted by the King’s most Excellent Majesty, by and with the Advice and Consent of the Lord’s Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That, from and after the Twenty-fourth Day of June, One thousand six hundred ninety-six, it shall and may be lawful for any Person or Persons, inhabiting or residing, or who shall have any Goods or Chattels within the Principality of *Wales*, or Marches thereof, by their last Wills and Testaments to give, bequeath, and dispose of, all and singular their Goods, Chattels, Debts, and other Personal Estate, to their Executor or Executors, or to such other Person or Persons as the said Testator or Testators shall think fit, in as large and ample Manner as by the Laws and Statutes of this Realm any Person or Persons may give and dispose of the same, within any Part of the Province of *Canterbury*, or elsewhere; and that from and after the said Twenty-fourth Day of June, One thousand six hundred ninety-six, the Widows, Children, and other the Kindred of such Testator or Testators, shall be barred to claim or demand any Part of the Goods, Chattels, or other Personal Estate of such Testator or Testators, in any other Manner than as by the said last Wills and Testaments is limited and appointed; any Law, Statute, Custom, or Usage to the contrary in any wise notwithstanding.

Inhabitants of *Wales* may, for the future, dispose of their Goods and Chattels by Will, &c.

11. Provided always, That nothing in this Act contained shall extend to take away any Right or Title, which any Woman now married, or younger Children now born, may have to the reasonable Part of their Husbands or Fathers Estate, by virtue or colour of the said Custom or Usage.

Not to take away the Right of Women already married, &c.

No. 22.

2 & 3 Anne. c. 5.---An Act to repeal a Proviso in an Act of the fourth Year of the Reign of King WILLIAM and Queen MARY, which prevents the Citizens of the City of *York* from disposing of their personal Estates by their Wills, as others inhabiting within the Province of *York* by that Act may do,

‘ WHEREAS by an Act made and passed in the fourth Year of the Reign of their late Majesties King WILLIAM and Queen MARY, intituled, *An Act that the Inhabitants of the Province of York may dispose of their personal Estates by their Wills, notwithstanding the Custom of that Province*: In which Act there is a Proviso, that nothing in the said Act contained should extend or be construed to extend to the Citizens of the Cities of *York* and *Chester*, who were or should be Freemen of the said respective Cities, inhabiting therein, or within the Suburbs thereof, at the Time of their Death: But that every such Citizen’s Widow and Children, should and might have and enjoy such reasonable Part and Proportion of the Testator’s personal Estate, as she or they might or ought to have had by the Custom of the Province of *York*, before the making of the said Act: And whereas, notwithstanding the Mayor and Common-

2 & 3 Anne. c. 5
W. & M. c. 2.

No. 22.
2 & 3 Anne. c. 5.

Freemen of
York may dispose
of their personal
Estates by Will.

Widows or
Children barred
from Claim, other-
wise than by Tes-
tators Will.

Publick Act.

alty, on Behalf of the Inhabitants of the said City of *York*, have humbly desired that the said Proviso may be repealed, so that the Freeman of the said City may have the Benefit of the said Act of Parliament, as well as all other Persons inhabiting within the said Province; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That from and after the six and twentieth Day of *March* the Year of our Lord one thousand seven hundred and four, the said Proviso, so far as the same concerns the Citizens of the City of *York*, shall be repealed, and is hereby repealed and made null and void, so that from thenceforth it shall and may be lawful for all and every the Citizens of the said City of *York*, who are or shall be Freemen of the said City, inhabiting therein, or within the Suburbs thereof, at the Time of their Death, by their last Wills and Testaments, to give, bequeath, and dispose of their Goods, Chattels, Debts, and other Personal Estates, to their Executor or Executors, or to such other Person or Persons as the said Testator or Testators shall think fit, as any other Person or Persons inhabiting or residing within the said Province of *Yor.*, may lawfully do by virtue of the said Act: And that from and after the said six and twentieth Day of *March*, the Widows, Children, and other Kindred of such Testator or Testators, shall be barred to claim or demand any Part of the Goods, Chattels, or other personal Estate of the Testator or Testators, in any other Manner than as by the said last Wills and Testaments is limited and appointed; any Thing in the said Act, or any other Law, Statute, or Usage to the contrary in any wise notwithstanding.

II. Provided, and be it enacted, That this Act shall be taken and allowed in all Courts within this Kingdom as a Publick Act; and all Judges and Justices are required as such to take Notice thereof without special pleading the same.

No. 23.

4 & 5 Anne. c. 16. — An Act for the Amendment of the Law, and the better Advancement of Justice.

[Inserted Part I. Class I. No. 23. See Sections 14, 27.]

No. 24.

p.

11 George I. c. 18. — An Act for regulating Elections within the City of *London*, and for preserving the Peace, good Order and Government of the said City.

11 Geo. I. c. 18.

What freemen
made after first
June, 1723 may
dispose of their
Personal Estate as
they think fit.

XVII. And to the Intent that Persons of Wealth and Ability, who exercise the Business of Merchandize, and other laudable Employments within the said City, may not be discouraged from becoming free of the same, by reason of the Custom restraining the Citizens and Freemen thereof from disposing of their Personal Estates by their Last Wills and Testaments; Be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for all and every Person and Persons who shall, at any Time from and after the said first Day of *June* one thousand seven hundred and twenty-five, be made or become free of the said City; and also to and for all and every Person and Persons who are already free of the said City, and on the said first Day of *June* one thousand seven hundred and twenty-five shall be unmarried, and not have Issue by any former marriage, to give, devise,

will and dispose of his and their Personal Estate and Estates, to such Person and Persons, and to such Use and Uses, as he or they shall think fit; any Custom or Usage of or in the said City, or any By-Law or Ordinance made or observed within the same, to the contrary thereof in any wise notwithstanding

No 24.
11 Geo. 1 c 18.

XVIII. Provided nevertheless, That in Case any Person, who shall at any Time or Times from and after the said first Day of June One Thousand Seven Hundred and Twenty-five become free of the said City, and any Person or Persons who are already free of the said City, and on the said first Day of June One Thousand Seven Hundred and Twenty-five shall be unmarried, and not have Issue by any former Marriage, hath agreed or shall agree by any Writing under his Hand, upon or in Consideration of his Marriage, or otherwise, that his Personal Estate shall be subject to, or be distributed or distributable according to the Custom of the City of London; and in Case any Person so free, or becoming free as aforesaid, shall die intestate: in every such Case the Personal Estate of such Person so making such Agreement, or so dying intestate, shall be subject to, and be distributed and distributable according to the Custom of the said City; any Thing herein contained to the contrary in any wise notwithstanding.

Exception.

No. 25.

25 George II. c. 6.—An Act for avoiding and putting an End to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning real Estates in that Part of Great Britain called England, and in his Majesty's Colonies and Plantations in America.

[Inserted Part II. Class XI. No. 8.]

No. 26.

38 George III. c. 87.—An Act for the Administration of Assets in Cases where the Executor to whom Probate has been granted is out of the Realm.

[28th June 1798.]

WHEREAS the Laws now existing are not sufficient to enforce a speedy Distribution of the Assets of deceased Persons where the Executor to whom Probate of the Will hath been granted is out of the Jurisdiction of his Majesty's Courts of Law and Equity; he it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, at the Expiration of twelve Calendar Months from the Death of any Testator, if the Executors or Executor to whom Probate of the Will shall have been granted, are or is then residing out of the Jurisdiction of his Majesty's Courts of Law and Equity, it shall be lawful for the Ecclesiastical Court which hath granted Probate of such Will, upon the Application of any Creditor, next of Kin, or Legatee, grounded on the Affidavit hereinafter mentioned, to grant such Special Administration as hereinafter is also mentioned; which Ad-

38 Geo. III. c. 87.

If, at the Expiration of twelve Months from a Testator's Decease the Executor to whom Probate is granted, shall not reside within the Jurisdiction of his Majesty's Courts, a Creditor, &c. may obtain Special Administration on a s. stamp.

No. 26.
38 Geo. III. c. 87.

The Party apply
ing to make the
following

Affidavit.

Administration to
be granted in the
following Form.

ministration shall be written or printed upon Paper or Parchment stamped only with one five Shilling Stamp, and shall pay no further or other Duty to his Majesty, his Heirs or Successors.

II. And be it further enacted, that the Party applying to the Spiritual Court to grant such Administration as aforesaid, shall make an Affidavit in the following Words, or to the Purport and effect following:

I, **I** of do swear, That there is due and
unsworn, as the Case may happen to be, (in which latter Case he
shall swear to the best of his Belief only,) from the Estate and Effects
of deceased, the Sum of and that C. D.
the only Executor capable of acting, and to whom Probate hath been
granted, hath departed this Kingdom, and is now out of the Juris-
diction of his Majesty's Courts of Law and Equity, and that this
Deponent is desirous of exhibiting a Bill in Equity in his Majesty's
Court of for the Purpose of being paid his demand out
of the Assets of the said Testator.

III. And be it further enacted, That the Administration to be granted pursuant to this Act shall be in the Form hereinafter mentioned; (that is to say,)

by Divine Providence, Archbishop of Canterbury,
Primate of all England and Metropolitan, to our well-beloved in
Christ Greeting: Whereas it hath been alledged
before the Worshipful Doctor of Laws, Surrogate
of Doctor of Laws, Master Keeper, or Commissary
of our Pretogative Court of Canterbury, lawfully constituted by you
the said That did, whilst living, and
of sound Mind, Memory, and Understanding, make and duly execute his last Will and Testament in Writing, and did therefore nominate, constitute, and appoint, his Executors, (or, sole
Executor) who in the Month of proved the said Will by
the Authority of our said Court, and now reside (or, resides) out of
this Kingdom, and out of the Jurisdiction of his Majesty's Courts of
Law and Equity (as in and by an Affidavit duly made and sworn to
by and brought into and left in the Registry of our
said Court, Reference being thereunto had will more fully and at
large appear): And whereas the Surrogate aforesaid, having duly considered the Premises, did, at the Petition of the said
decree Letters of Administration of all and singular the Goods, Chattels, and Credits of the said deceased, to be committed and granted to you the said named by or on the
Behalf of the said a Creditor, (Legatee) or (one of the
next Kin) of the said Deceased, (as the Case may be) limited for the
Purpose, to become and be made a Party to a Bill or Bills to be exhibited against you in any of his Majesty's Courts of Equity, and to carry the Decree or Decrees of any of the said Court or Courts into Effect, but no further or otherwise (Justice so requiring): And we being desirous that the said Goods, Chattels, and Credits may be well and faithfully administered, applied, and disposed of, according to Law, do therefore, by these Presents, grant full Power and Authority to you, in whose Fidelity we confide, to administer, and faithfully dispose of the said Goods, Chattels, and Credits, according to the Tenor and Effect of the said Will, limited as aforesaid, so far as such Goods, Chattels, and Credits of the Deceased will thereto extend, and the Law requires, you having been already sworn, well and faithfully to administer the same, and to make a true and perfect Inventory of all and singular the said Goods, Chattels, and Credits, so far

‘ as the same may come to your Hands, and to exhibit the same into the Registry of our said Prerogative Court of *Canterbury*, on or before the next ensuing, and also to render a just and true Account thereof: And we do by these Presents ordain and constitute you Administrator of all and singular the Goods, Chattels, and Credits, of the said Deceased, limited as aforesaid, but no further, or otherwise. No 26. 7
17.

‘ Given at *London*, the Day of in the Year of our
‘ Lord and in the Year of our
‘ Translation ’*

IV And be it further enacted, That it shall be lawful for the Court of Equity in which such Suit shall be depending, to appoint (if it shall be needful) any Persons or Person to collect in any outstanding Debts or Effects due to such Estate, and to give Discharges for the same, such Persons or Person giving Security in the usual Manner, duly to account for the same. Court of Equity
may appoint Person
to collect Debts
standing due to
Estate.

V. And be it further enacted, That it shall be lawful for the Accountant General of the High Court of Chancery, or for the Secretary, or Deputy Secretary, of the Governor and Company of the Bank of *England*, to transfer, and for the Governor and Company of the Bank of *England* to suffer a Transfer to be made of any Stock belonging to the Estate of such deceased Person, into the Name of the Accountant General, in Trust, for such Purposes as the Court shall direct, in any Suit in which the Person to whom such Administration hath been granted, shall be, or may have been, a Party: Provided nevertheless, that if the Executors or Executor capable of acting as such, shall return to and reside within the Jurisdiction of any of the said Courts pending such Suit, such Executors or Executor shall be made Party to such Suit, and the Costs incurred by granting such Administration, and by proceeding in such Suit against such Administrator, shall be paid by such Person or Persons, or out of such Fund as the Court where such Suit is depending shall direct. Stock belonging to
the Estate of the
Deceased may be
transferred into the
Name of the
Accountant General
in Chancery, in
Trust for such Pur-
poses as the Court
shall direct in any
suit.
Executor returns
into the Court
pending the Suit
shall be made
Party in such
Suit.

VI. ‘ And whereas Inconveniences arise from granting Probate to ‘ Infants under the Age of twenty-one;’ be it enacted, That where an Infant is sole Executor, Administration, with the Will annexed, shall be granted to the Guardian of such Infant, or to such other Person as the Spiritual Court shall think fit, until such Infant shall have attained the full Age of twenty-one Years, at which Period, and not before, Probate of the Will shall be granted to him. Where an Infant
is sole Executor,
Administration
with the Will an-
nexed, to be grant-
ed to the Guardian
&c. till the Infant
is twenty-one.

VII. And be it enacted, That the Person to whom such Administration shall be granted, shall have the same Powers vested in him as an Administrator now hath by Virtue of an Administration granted to him *durante minore etate* of the next of Kin. Who shall have
the same Powers
as an Administrator
durante minore
etate.

* Upon the Death of the Executor the Authority of an Administrator under this Act is not void, but only voidable—*Taynton v. Haunay*, 3 B. and P. 26.

End of Part Third.

PART IV.

COURTS

AND

CIVIL PROCEEDINGS.

PART IV. CLASS I.

GENERAL COURTS OF COMMON LAW. JUDGES.

No. 1.—MAGNA CHARTA.

9 Henry 3. c. 11.—Common Pleas shall not follow the King's Court.

Ex Rot. in Turr. Lond.

COMMUNIA placita non sequantur Curiam nostram set teneantur in aliquo loco certo.

COMMON Pleas shall not follow our Court, but shall be holden in some Place certain.

No. 1.
9 Henry III.
c. 11.

No. 2.

3 Edward I. (1 Westmister) c. 46.—One Plea shall be decided by the Justices before another commenced.

PURVEU est ensement, & per le Roi commande, que les Justices al Baunk le Roi & Justices de Baunk a Westm' desoremes perpleient les plees atterminez a un jour, en ceo que rien soit arraigne, ou comence des plees del jour ensuant, hors pris qe les es-soignes soient entres, jugez, & renduz; & per acheson de ceo nul homme se affie, qil en viegue a son jour, qe done lui est

IT is provided also, and commanded by the King, That the Justices of the King's Bench, and of the Bench at Westmister, from henceforth shall decide all Pleas determinable at One Day, before any Matter be arraigned, or Plea commenced the Day following, saving that their Essoins shall be entered, judged, and allowed; yet, by Reason hereof, let none presume to absent himself at the Day to him limited.

No. 2.
3 Edward I.
c. 46.

No. 3

6 Edward I. (Gloucester) c. 8. — No Suit for Goods in the King's Courts under Forty Shillings. Attorneys may be made where an Appeal lieth not. The Defendant being essomed shall bring in his Warrant.

No. 3.
6 Edward I.
c. 8.

IT is provided also, That Sheriffs shall plead Pleas of Trespass in their Counties, as they have been accustomed to be pleaded. And that none from henceforth shall have Writs of Trespass before Justices, unless he swear by his Faith, that the Goods taken away were worth Forty Shillings (1) at the least. And if he complain of Beating, he shall answer by his Faith, that his Complaint is true. Touching Wounds and Maims, a Man shall have his Writ as before hath been used; and it is agreed, that the Defendants in such Pleas may make their Attornies, where Appeal lieth not; so that if they be attainted being absent, then the Sheriff shall be commanded to take them, and shall have like Pain as they

Ex Rot. in Turr. Lond.

DURVEU est ensement qe viscontes pleident en Cuntees les plesz de trespas ausi com il soloient estre pleidez. E qe nul eit desormes bref de trespas devaunt Justices se il na fie par sei qe les biens enportez vailent quaraunte sol all miens. E si il se pleint de batterie a fie par sei qe sa pleint est veritable. De plaies e de mahems eit em bref si com em soleit aver. E graunte est qe les defendants puissent fere attorniez en tels plaiz ou apel ne est issi qe si ils soient atteintz del trespas en lur absence seit demanda al viscounte qe il soient pris e oyent dunge la peyne qil averreint si il eussent este present quant le jugement fu rendu. E si les pleintifs desormes en tel trespas se facent essoneer apres la primere apparence

(1.) If it appear to a superior Court that the Debt sued for is under forty Shillings, they will, on Motion, stay the Proceedings before Trial: *Kennard v. Jones*, 4 T. R. 495; and Proceedings were accordingly stayed, it being sworn by the Defendant, and not denied by the Plaintiff, that the Debt was under forty Shillings: *Wellington v. Aders*, 5 T. R. 64. But no Action can be brought in the County, or other inferior Court, unless the Cause of Action arise, and the Defendant reside (or at least is served with Process) within the Jurisdiction of such Court; and if that be not the Case, or if for other Cause the Plaintiff cannot sue in an inferior Court, he may sue in a superior Court for a Debt under forty Shillings: *Welsh v. Troyte*, 2 H. B. 29. *Tubb v. Woodward*, 6 T. R. 175. *Smith v. O'Kelly*, 1 B. & P. 76. *Busby v. Fearon*, 8 T. R. 235.

It is obvious that, at the Time when the Distinction was made, as to the Amount of the Demand for which Jurisdiction was given to the County, and other inferior Courts, such Amount was of very considerable relative Importance, and that by the Change which has since taken Place it has become absolutely insignificant; so that, in the Majority of the Cases that are brought before the superior Courts, the original Object in Dispute is a Matter of very small Importance in Comparison to the Expense of Litigation; and, consequently, the Dread and Apprehension of such Expense is equivalent to a Failure of Justice. The Inconvenience of this State of Things has been long felt and acknowledged, and different Proposals have been made for removing it. As the Attention of the Editor has been very particularly directed to this Subject, an Article is intended to be devoted to it in the Appendix.

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seit jor done desqe a venue de Justices e les defendaintz endementers seint en pez en tels plesz e en autres plesz la ou attachemenz e distresces gisent. E si le defendaut se face essoneer de service le Rey e ne porte sun garante al jor qe est done par sun essoneur qe il rende al pleintife les damages de la journee de vint souz ou de plus solom la discrecium des Justices e ja le meins en la greve merci le Rey.

' should have had, if they had
' been present at the Judgment
' given. And if the Plaintiffs
' from henceforth in such Tres-
' passes cause themselves to be
' essoined after the first Ap-
' pearance, Day shall be given
' them unto the coming of the
' Justices in Eyre, and the De-
' fendants in the mean Time
' shall be in Peace. In such
' Pleas and other, whereas At-
' tachments and Distresses do
' lie, if the Defendant essoin
' himself of the King's Service,
' and do not bring his Warrant
' at the Day given him by the
' Essoin, he shall recompence
' the Plaintiff Damages for his
' Journey twenty Shillings, or
' more, after the Discretion of
' the Justices, and shall be
' grievously amerced unto the
' King.

No. 3.
6 Edward I.
c. 8.

No. 4.

13 Edward I. st. 1. c. 30. — The Authority of Justices of *Nisi Prius*. Adjournment of Suits. Certain Writs that be determinable in their proper Counties. A Jury may give their Verdict at large. None but which were summoned shall be put in Assises or Juries.

ASSIGNENTUR docetore duo Justitiiarii jurati coram quibus & non aliis capiantur assise Nove disseisine Mortis antecessoris & Attincte & assosient sibi unum vel duos de discretioribus militibus comitatus in quem venerint & capiant assisas predictas & attinctas ad plus ter per annum videlicet semel inter quindenam sancte Johannis Baptiste & gulam Augusti & iterum inter festum Exaltationis sancte Crucis & octabis sancti Michaelis & tertio inter festum Epiphanie & festum Purificationis

FROM henceforth two Justices sworn shall be assigned, before whom, and none other, Assises of *Novel disseisin, Mortdauncestor*, and *Attaints* shall be taken, and they shall associate unto them one or two of the discreetest Knights of the Shire into which they shall come; and shall take the foresaid Assises and Attaints but thrice in the Year at the most, that is to say, first between the *Quinzime* of Saint John Baptist, and the *Gule* of August: and the second Time, between

No. 4.
13 Edward I.
c. 30.

Who shall be Justices of Nisi Prius.

No. 4.
13 Edward I.
c. 30.

Adjournment
of Assises.

Inquisitions of
Trespas.

the Feast of the Exaltation of
the Holy Cross, and the *Utas*
of Saint *Michael*; and the
third Time, between the
Feast of the *Epiphany*, and
the Feast of the Purification
of the Blessed *Mary*. And
in every Shire at every taking
of Assises before their De-
parture, they shall appoint
the Day of their Return, so
that every one of the Shire
may know of their coming,
and shall adjourn the Assises
from Term to Term, if the
taking of them be deferred
at any Day by vouching to
Warranty, by *Essoin*, or by
Default of Jurors. And if
they see that it be profitable
for any Cause that Assises of
Mortduncestor, being respi-
ted by *Essoin* or *Voucher*,
ought to be adjourned into
the Bench; it shall be law-
ful for them to do it, and
then they shall send the
Record with the original
Writ before the Justices of
the Bench; and when the
Matter is come to the taking
of the Assise, the Justices of
the Bench shall remit the
Matter to the former Justices
before whom the Assise shall
be taken. But from hence-
forth the Justices of the Bench
in such Assises shall give four
Days at the least in the Year
before the said Justices assign-
ed, to spare Expence and La-
bour. Inquisitions of Treas-
pass shall be determined be-
fore the Justices of both
Benches, except the Trespas
be so heinous that it shall re-
quire great Examination. In-
quisitions also of other Pleas
pleaded in either of the
Benches, shall be determined
before them, wherein small
Examination is required, as

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beate Marie. Et in quolibet
comitatu ad quamlibet captio-
nem assisarum antequam rece-
dant statuant diem de reditu
suo ita quod omnes de comitatu
scire possint eorum adventum
& de termino in terminum ad-
journent assisas si pervocationem
warranti per *essonium* per
defectum recognitorum si ad
unum diem captio earum differ-
ratur. Et si aliqua de causa
viderint quod utile sit quod as-
sise Mortis antecessoris per *essonium* vel vocationem warranti
respectu adjournentur in Banco
liceat eis hoc facere & tunc
mittatur Justitiariis de Banco
recordum cum brevi originali
Et cum loquela per veniatur ad
captionem assise remittatur lo-
quela cum brevi originali per
Justitios de Banco ad priores
Justitios coram quibus capiat-
ur assisa. Set decetero dent
Justitii de Banco in hujus-
modi assisis ad minus quatuor
dies per annum coram prefatis
Justitiis assignatis ut parcatur
laboribus & expensis. Attermi-
nentur inquisitiones capien-
de transgressionibus placitatis
coram Justitiis de utroque
Banco nisi ita enormis sit trans-
gressio quod magna indigeat
examinatione. Atterminentur
etiam coram eis inquisitiones
de aliis placitis placitatis in
utroque Banco in quibus facilis
est examinatio ut quando dedi-
citur ingressus vel seisin alicujus
vel in casu cum de uno
articulo sit inquirendum. Set
inquisitiones de grossis & plu-
ribus articulis que magna indi-
geant examinatione capiantur
coram Justitiis de Bancis
nisi ambe partes petant quod
inquisitio capiat coram ali-
quibus de societate cum in par-
tes illas venerint quod decet

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ro non fiat nisi per duos Justit-
arios vel unum cum aliquo mi-
lite de comitatu in quem partes
consentiant. Nec atterminen-
tur hujusmodi inquisitiones co-
ram aliquibus Justitiariis de
Banco nisi statuatur certus
dies & locus in comitatu in
presentia partium dies & locus
inserantur in brevi de Judicio
per hec verba: *Precipimus tibi*
quod venire facias coram Jus-
titariis nostris apud Westm' in
Octabis sancti Michaelis nisi
talis & talis tali die & loco ad
partes illas venerint xii. &c.

Et cum hujusmodi inquisi-
ones capte fuerint retournentur
in Bancis & ibi fiat judicium &
irrotulentur. Et si omnia for-
ma predicta aliqui inquisitiones
capiantur pro nullis habeantur
excepto quod assisa Ultime
presentationis & inquisitionis
super Quare impedit attermin-
entur in proprio comitatu co-
ram uno Justitiario de Banco
& uno milite ad certos tamen
diem & locum in Banco statu-
tos sive defendens constiterit
sive non & ibi statim reddatur
judicium. Habeant decetero
omnes Justitarii de Bancis in
itineribus clericos irrotulantes
omnia placita coram eis placita
sicut antiquitus habere con-

when the Entry or Seisin of
any is denied, or in case when
one Article is to be inquired.
But Inquisitions of many and
great Articles, the which re-
quire great Examination, shall
be taken before the Justices
of the Bench, except that both
Parties desire that the Inqui-
sition may be taken afore
some of the Associates when
they do come into those Parts;
so that from henceforth it shall
not be done but by two Jus-
tices, of one, with some
Knight of the Shire, upon
whom the Parties can agree.
And such Inquisition shall not
be determined by any Justi-
ces of the Bench, unless a
Day and a Place certain be
appointed in the Shire, in pre-
sence of the Parties, and the
Day and Place shall be men-
tioned in a Writ judicial by
these Words: *Precipimus*
tibi quod venire facias coram
Justitiariis nostris apud West-
monasterium in octabis sancti
Michaelis, nisi talis & talis tali
die & loco ad partes illas ve-
nerint, duodecim, &c.

II. And when such In-
quests be taken, they shall be
returned into the Bench, and
there shall Judgement be
given, and there they shall
be enrolled. And if any In-
quisitions be taken otherwise
than after this Form, they
shall be of no Effect, except
that an Assise of *Durrein pre-*
sentment, and Inquisitions of
Quare impedit shall be deter-
mined in their own Shire, be-
fore one Justice of the Bench
and one Knight, at a Day
and Place certain in the
Bench assigned, whether the
Defendant consent or not,
and there the Judgement shall
be given immediately. All

No. 4.
13 Edward 1.
c. 30.

The Writ of
Nisi Prius.

Assises of Dar-
rein present-
ment and Quare
impedit shall be
ended in their
proper Coun-
ties.

Clerks of As-
sise.

No. 4. 'Justices of the Benches from
13 Edward I. c. 30. 'henceforth shall have in their
Circuits Clerks to inroll all
Pleas pleaded before them,
like as they have used to have
in Time passed. And also it
is ordained, That the Justices
assigned to take Assises shall
not compel the Jurors to say
precisely whether it be Dis-
seisin or not, so that they do
shew the Truth of the Deed,
and require Aid of the Jus-
tices. But if they of their
own Head will say, that it is
Disseisin, their Verdict shall
be admitted at their own
Peril. And from hence
the Justices shall n
Assises or Juries a
than those that were sum-
moned to the same at the
first.'

None shall be
put in Juries but
such as were
summoned.

No. 5.
27 Edward I.
c. 4

No. 5.
27 Edward I. st. 1. c. 4.—*Nisi Prius* shall be granted
before one of the Justices of the Court where the
Suit is commenced.

"ALSO where we have
provided, that none
shall be impanelled any
where out of the Shire where
he is dwelling, in Recogni-
sances, Enquests and Juries,
that have less than an hundred
Shilling of Land; whereby
as well they as others who
have more Lands, by too
often appearing as well in
our Exchequer, as before our
Justices of either Bench, are
much impoverished."

"II. We therefore, con-
sidering the intolerable Da-
mage of our People, not only
for the Discharge of such Ju-
rors, but also for the more
speedy Ministration of Jus-
tice to all Parties suing in our

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sueverint. Item ordinatum est
quod Justitiiarii ad assisas capi-
endas assignati non compellant
Juratores dicere precise si sit
disseisina vel non dummodo
voluerint dicere veritatem fac-
ti & petere auxilium Justitiiari-
orum. Set si sponte velint di-
cere quod disseisina est vel non
admittatur eorum verdictum
sub spe periculo. Et de cetero
non ponant Justitiiarii in assisis
aut juratis aliquos juratores
nisi qui ad hoc primo fue-
runt summoniti.

Ex Rot. in Turr. Lond.

ITEM cum statuerimus quod
nullus ponatur alicubi extra
com' in inquisitionibus recog-
nitionibus & juratis aliquibus
qui minus quam centum soli-
datis terre habeat per quod
tam ipsi quam plus terre ha-
bentes propter frequentes tam
ad Scaccarium quam coram
Justis de utroque Banco sum-
mationes depauperantur.

Nos tantam intolerabilem
populi nostri jacturam adver-
tentes non solum ad eorumdem
juratorum exonerationem set
etiam ad celerem partibus in-
cur nostra placitantibus justi-
tiam exhibendam statuimus &

Ex Rot. in Turr. Lond.

ordinavimus quod inquisitione & recognitiones coram Justic' de utroque Banco decetero adjudicande capiantur tempore vacationis coram aliquo Justic' eorumdem coram quibus placitum deductum fuerit associato illi uno milite com' illius ubi tales inquisitiones emergerint nisi fuerit inquisitio magna indigens examinatione. Et sic in hujusmodi inquisitionibus capiendis decetero fiat prout Justic' ad utilitatem regni nostri potius esse viderint faciendum non obstante statuto nuper apud Westm' super inquisitionibus capiendis edito continente quod si omissa forma in statuto illo ordinata alique inquisitiones capiantur pro nullis penitus habeantur. Et ideo tibi precipimus firmiter injungentes quod statim & sine dilatione aliqua fac' legi & publicari in civitatibus burgis villis mercatoriis & locis aliis solempnibus per totam balivam tuam ubi videris expedire omnes articulos supradictos ut illos quos concessimus ac teneri volumus & firmiter observari in forma predicta integre & inconcusse ac omnia & singula suprascripta omnibus scire fac' indilate. T. R. apud Westm' secundo die April.

' Court, have provided and
' ordained, that Enquests and
' Recognisances determinable
' before Justices of either
' Bench, from henceforth shall
' be taken in Time of Vacation
' before any of the Justices be-
' fore whom the Plea is brought,
' being associate with one
' Knight of the same Shire
' where such Enquests shall
' pass, unless it be an Enquest
' that requireth great Exami-
' nation. And so from hence-
' forth in taking such Enquests,
' the Justices shall do as to
' them shall seem most expe-
' dient for the common Utility
' of our Realm, notwithstanding
' the Statute lately made at
' Westminster upon the taking
' of such Enquests, containing,
' that if any Enquests be taken
' contrary to the Form of the
' said Statute, they should be
' of none Effect.'

No. 4.
27 Edward I.
stat. 1. c. 4.

No. 5.

28 Edward I. stat. 3. c. 4.—Common Pleas shall not be holden in the Exchequer.

ESTRE ceo nul commun
plai ne seit desoremes
tenu al Eschequer cointre la
fourme de la Grant Chartre.

MOREOVER no Com-
mon Pleas shall be
' from henceforth holden in the
' Exchequer, contrary to the
' Form of the Great Charter.'

No. 5.
28 Edward I.
stat. 3. c. 4.

No. 6.

28 Edward I. stat. 3. c. 5.—The Chancellor and the Justices of the King's Bench shall follow the King.

AUTRE part le Roi vo-
qe le Chauncelrie e

AND on the other Party,
the King will, that the

No. 6.
28 Edward I.
stat. 3. c. 5.

No. 6.
28 Edward I.
st. 3. c. 5.

‘Chancellor and the Justices of
‘his Bench shall follow him,
‘so that he may have at all
‘Times near unto him some
‘Sages of the Law, which be
‘able duly to order all such
‘Matters as shall come unto the
‘Court at all Times, when
‘Need shall require.’

Ex Rot. in Turr. Lond.

Justices de soen banc lui suivent
issint qil eit touz jours pres de
lui ascuns Sages de la lei qui
sachent les busoignes qe vi-
egnent a la curt duement deli-
verer a tote les foiz qe mester
serra.

No. 7.

12 Edward II. stat. T. c. 3.—Inquests and Juries touch-
ing Plea of Land shall be taken by *Nisi Prius*.

No. 7.
12 Edward II.
st. 1. c. 3.
13 Ed. 1. st. 1.
c. 30.
27 Ed. 1. st. 1.
c. 4.

“AND where it is contain-
ed in a Statute made at
Westminster the second Day
of April, in the xxvii. Year
of the Reign of the King’s
Father that now is, that
Inquests and Recognisances
taken before Justices of the
one Bench and of the other,
should be taken before any
Justice of the Places accom-
panied with some Knight
of the Shire where such In-
quests hap to be taken, if
they have not Need of great
Examination; and that in
such Inquests the Justices
shall do as they think most
expedient for the Wealth of
the Realm, the which Sta-
tute needeth to be better de-
clared;” ‘it is agreed, That
Inquests and Juries that be
and shall be taken in Pleas of
Land, that require not great
Examination, shall be taken
in the Country before a Jus-
tice of the Place where the
Plea is, accompanied with a
substantial Man of the Coun-
try, Knight, or other, so that
a certain Day be given in the
Bench, and a certain Day
and Place in the Country, in

ET com il scit contenu en
lestatut fait a Westm’
le second jour d’Averill lan du
regne Edward pere nostre seig-
neur le Roi qore est vint septi-
me qe les enquestes & les re-
conisaunces devant Justices del
un Bank & del autre ajugez
fussent prises devant ascun des
Justices des places associ a li
un Chivaler du Counte ou les
enquestes serreient a prendre si
les enquests ne fussent de grant
examenement & qe en tieles
enquestes prendre fust fait si-
com les Justices verroient qe
feist a fere au profit du Roi-
alme le quel estatut ad besoigne
destre meuz declare Acorde
est qe les enquestes & juretz
qe sont & serront a prendre en
plee de terre qe ne sont mie de
grant examenement soient
prises en pays devant un Jus-
tice de la place ou le ple est
associe a li un prodhomme du
pays Chevaler ou autre Issint
qe certain jour seit done en
Bank & certain jour & leu en
pays en presence des parties si
demaundaunt le prie. Et ausi
les enquestes & jurez en plai
de terre qe demaundent grant
examenement soient prises en

See 14 Ed. 3.
st. 1. c. 16. be-
fore what Per-
sons *Nisi Prius*
may be granted.

Ex Rot. in Turr. Lond.

pays en la fourme susdite devant deus Justices du Bank:

' the Presence of the Parties,
' if the Demandant request it.
' And also the Inquests and
' Juries, in Pleas of Land that
' require great Examination,
' shall be taken in the Country
' (in the Manner abovesaid)
' before two Justices of the
' Bench.'

No. 7.

12 Edward II.
stat. 1. c. 3.

No. 8.

12 Edward II. stat. 1. c. 4.—Justices of *Nisi Prius* shall record Nonsuits, Defaults, &c.

ET eit la Justice ou les Justices poer a recorder nonsutes & defautes en pays as jour & lieux qe serront assignez com desuz est dit. Et ceo qil averont fait en les choses susdites seit reporte en Bank a jour done & illoeqs enroule & de ceo jugement rendu. Et nent mie le Roi qe les dites enquestes & jurez ne puissent estre prises en Bank si ele veignent ne qe cest estatut festent a grant assises. Et ausi une Justice del un Bank & de lautre associe a lui un prodhomme du pays Chevaler ou autre al requeste du pleintiff preigne les enquestes dez pledz pledez & a pleder qe sont movez par attachementz & destresces Et eyt poer de recorder les nonsutes com desus est dist & prendre les enquestes par defautes illoeqs faites. Et quant a les assises de Dreijn present & les enquestes sur bref de *Quare impedit* prendre seit fait com il est contenuz en le secund estatut de Westm' Et eyt la Justice poer de recorder nonsutes & defautes en pays & sur ceo jugement doner com en Bank & soit reporte en Bank ceo qe il

AND the Justices or Justice shall have Power to record Nonsuits and Defaults in the Country, at the Days and Places assigned, as afore is said. And that which they shall have done in the Things above mentioned, shall be reported in the Bench at a Day certain, there to be inrolled, and thereupon Judgement shall be given. And the King intendeth not, that the said Inquests and Juries should not be taken in the Bench if they come, nor that this Statute should extend unto great Assizes. And also one Justice of the one Place and of the other, being associate with a discreet Man of the Country, Knight, or other, at the Request of the Plaintiff, shall take Inquests upon Pleas pleaded and to be pleaded, that be moved by Attachment and Distress, and shall have Power to record Nonsuits as above is said, and to take Inquests upon Defaults there made. And as to the Inquests to be taken upon Writs of *Quare impedit*, it shall be done as is contained in the Statute of Westmin-

No. 8.

12 Edward II.
stat. 1. c. 4.

By 14 Ed. 3.

st. 1. c. 16.
Justices of Assize may give Judgement in Quare impedit, &c.

No. 8.
12. Edward II.
stat. 1. c. 4.

ter the Second; and the Justices shall have Power to record Nonsuits and Defaults in the Country, and to give Judgement thereupon, as they do in the Bench, and there to report that which they have done, and there to be enrolled. And if it happen, that the Justice or Justices that shall be assigned to take such Inquests in the Country, do not come, or if they come into the Country at the Day assigned, yet the Parties and Persons of such Inquests shall keep their Day in the Bench.

Ex Rot. in Turr. Lond.

avera fait & illoqs seit enroule. Et si issint aveigne qe les Justices ou la Justice qe seront ou serra assigne de prendre tieles enquestes en pays ne veignent pas ou ne veigne en pays au jour assigne jadumeyns les parties & les gentz del enqueste gardent lour jour en Bank.

No. 9.

Edward III. c. 2.—In what Cases only Pardon of Felony shall be granted. Who shall be Justices of Assise, &c.

No. 9.
Edward III.
c. 2.

“ITEM, Whereas Offenders have been greatly encouraged, because the Charters of Pardon have been so easily granted in Times past, of Manslaughters, Robberies, Felonies, and other Trespases against the Peace;” it is ordained and enacted, That such Charter shall not be granted, but only where the King may do it by his Oath, that is to say, where a Man slayeth another in his own Defence, or by Misfortune. And also they have been encouraged, because that the Justices of Gaol delivery, and of Oyer and Terminer, have been procured by great Men against the Form of the Statute made in the twenty-seventh Year of the Reign of King Edward, Grandfather to our Lord the King that now

ENSEMENT pur ceo qe messesours onte este esbauditz de ce qe chartres de pardon ont este si legerment grantees avant ces heures des homicides roberies folonies & autres trespas countre la pees acorde est & establi qe tiels chartres ne soient mes grantees forsquen cas ou le Roi le poet faire par son serment cest assavoir en cas ou home tue autre soi defendant ou par infortune. Et auxint onte este esbauditz de ceo qe Justiceries as deliverances des gaoles procurez countre forme de lestatut fait en temps le Roi Edward Ael nestre Seignur le Roi qore est en quele est contenuz qe les Justices as assises prendre assignez sils soient lais facent les facent les deliverances et si lun soit clerc & lautre lais qe le dit lais associe a lui un au-

Ex Rot. in Turr. Lond.

tre du pays facent la deliverance des gaols par quei acorde est & establi qe liels Justiceries ne soient mes grantees countre la forme du dit estatut & qe les assises atteintes & certificacions soient prises devant les Justices communement assignez qe soient bones gentz & loialx & conissantz de la lei & nemie autres solonc la forme dun autre estatut fait en temps meisme le Ael Et qe les oiers et terminers ne soient grantees forsque devant les Justices de lun Baunk & de lautre ou les justices errantz & ce pur led & orrible trespas & de lespecial grace le Roi solonc forme de statut de ce ordene en temps meisme le Ael & nemie autrement.

'is, wherein is contained, that
'Justices assigned to take Assizes, if they be Laymen, shall
'make Deliverance; and if the
'one be a Clerk, and the other
'a Layman, that the Layjudge,
'with another of the Country
'associate to him, shall deliver
'the Gaols: Wherefore it is enacted, That such Justices shall
'not be made against the Form
'of the said Statute; and that the
'Assizes, Attaints, and Certifications be taken before the
'Justices commonly assigned,
'which should be good Men
'and lawful, having Knowledge of the Law, and none
'other, after the Form of
'another Statute made in the
'Time of the said King Edward the First. And that the
'Oyers and Terminers shall
'not be granted but before
'Justices of the one Bench or
'the other, or the Justices
'Errants, and that for great
'Hurt, or horrible Trespases,
'and of the King's Special
'Grace, after the Form of the
'Statute thereof ordained in
'Time of the said Grandfather,
'and none otherwise.'

No. 9.

Edward III.
c. 2.Who shall be
Justices of Assize and Gaol
Delivery.To whom
Oyers and Terminers shall be
granted, and for
what Cause.

No. 10.

2 Edward III. c. 11.—The common Bench shall not be removed without Warning by Adjournment.

ET pur ce qe par remue-
ment du commune Bank
les plees bien souvent ont de-
more saunz jour a grant da-
mage et en peril de desheri-
tance des plusieurs acorde est
et establi qe desorenavant les
Justices avant ce qe le Bank
se remuera soient garniz par

"ITEM, Whereas by re-
moving of the common
Bench, the Pleas have often-
times abiden without Day,
to the great Hurt and Peril
of Disherison of Divers;"
it is enacted, That from
henceforth the Justices before
that the common Bench be

No. 10.

2 Edward III.
c. 11.

No. 10.
a Edward III.
c. 11.

removed, shall be warned by a Time, so that they may adjourn the Parties by such Time that they shall not lose their Process.

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temps issint queux peussent ajourner les parties si par temps queles ne perdent mie lour proces.

No 11.

Edward III. c. 2.—The Authority of Justices of Assise, Gaol-delivery, and of the Peace.

No. 11.
4 Edward III.

ITEM it is ordained, That good and discreet Persons, other than of the Places, if they may be found sufficient, shall be assigned in all the Shires of *England*, to take Assizes, Juries, and Certifications, and to deliver the Gaols; and that the said Justices shall take the Assizes, Juries, and Certifications, and deliver the Gaols, at the least three Times a Year, and more often, if need be. Also there shall be assigned good and lawful Men in every County to keep the Peace. And at the Time of the Assignments, Mention shall be made that such as shall be indicted or taken by the said Keepers of the Peace, shall not be let to Mainprise by the Sheriffs, nor by none other Ministers, if they be not mainpernable by the Law; nor that such as shall be indicted, shall not be delivered but at the common Law. And the Justices assigned to deliver the Gaols shall have Power to deliver the same Gaols of those that shall be indicted before the Keepers of the Peace; and that the said Keepers shall send their Indictments before the Justices, and they shall have

ENsement est acorde qe bones gentz & sages autres qe des places si homes les puisse trover suffisantz soient assignez en touz les countees d'Engleterre a prendre les assises jureez & certifications & a delivrer les gaoles & qe les ditz Justices preignent les assises jureez & certifications & deliverent les gaoles au meyns troitz foitz par an & plus souvent si mestier serra. Et soient auxient assignez bones gentz & loialx en chescun countee a garder la pees. Et soit fait mention es ditz assignementz qe ceux qi serront enditez ou pris par les ditz gardeins ne soient pas lessez au meynprise pas les viscountes ne par nul autre sils ne soient meynpernables par la lei ne que tieux enditez ne soient delivrez forqe a la commune lei. Et eient les justices assignez a la deliverance des gaoles poair a delivrer les gaoles de ceux qi serront enditez devant les gardeins de la pees & qe les ditz gardeins mandent devant les ditz Justices lour enditementz et eient les ditz Justices poair denqere sur viscountes gaolers & autres en qi garde tieux enditez serront sils facent deliverance ou lessent a meynprise nulles issint enditez qi ne sont mie meyn-

Ex Rot. in Turr. Lond.

pernables & de punir les ditz
viscountes gaolers & autres sils
facent riens contre cest acord.

' Power to enquire of Sheriffs,
' Gaolers, and other; in whose
' Ward such indicted Person
' shall be, if they make Deli-
' verance, or let to Mainprise
' any so indicted, which be
' not mainpernable, and to
' punish the said Sheriffs,
' Gaolers, and others, if they
' do any Thing against this
' Act.'

No. 11.
Edward III.
c. 2.

No. 12.

9 Edward III. stat. 1. c. 5.—Which Justices shall send
their Records and Process determined in the Exche-
quer.

ET ensement a la requeste
des dites communaltez
ad nostre Seigneur le Roi de
meisme lassent ordine & establi
qe Justices as assises prendre
gaoles delivrer & doier &
terminer assignez touz le re-
cordes & processess terminez &
maunde en execution mandent
a leschequier a la Seint Michel
chescu an unefoitz a liverer
illoeqes & qe le Tresorer &
les chaumbreleins qi pur temps
serront vewes les commissions
des ditz Justices meismes les
recordes & processess resceivent
des ditz Justices ou desouz lor
seals & les gardent en tresorie
come manere est issint totes
foitz qe les ditz Justices primes
preignent hors les estreates des
ditz recordes & processess
devers eux pur mander a fesch-
quier come avant soleient.

ITEM, At the Request of
the Commons, our Lord
the King by the said Assent
hath ordained and established,
That Justices of Assizes, Gaol
Delivery, and of Oyer and
Terminer, shall send all their
Records and Processes deter-
mined and put in Execution,
to the Exchequer at *Michael-*
mas, every Year once to be
delivered there; and the
Treasurer and Chamberlains,
which for the Time shall be,
having the Sight of the Com-
missions of such Justices, shall
receive the same Records and
Processes of the said Justices
under their Seals, and keep
them in the Treasury, as the
Manner is; so that the Justi-
ces always do first take out
the Estreats of the said Re-
cords and Processes against
them, to send to the Exche-
quer, as they were wont be-
fore.

No. 12.
Edward III.
st. 1. c. 5.

No. 13.

14 Edward III. stat. 1. c. 16.—Before what Persons *Nisi Prius* may be granted.

No. 13.
14 Edward III:
c. 16.

ITEM, Whereas before this Time it was established, That the Inquests and Juries which be to be taken, as well of the King's Bench as of the Common Bench, should be taken before one or more Justices of the same Place, as it is contained in the said Establishment; and now it 'is notoriously seen and known, that divers Inquests and Juries have been taken, and yet be in divers Counties of *England*, where no Justice did come, to the great Mischief of the Parties that do sue, and also of the good People of the Country which be impanelled." Wherefore it is assented and established, That whoso demandeth the *Nisi prius* in the King's Bench, as well at the Suit of the Defendant, as of the Plaintiff (as before this Time hath been done by the Form of the Statute) the *Nisi prius* shall be granted before any Justice of the Place where the Plea dependeth, if any of the same Place may well go into those Parts; and if not, then the *Nisi prius* shall be granted before any Justice of the Common Bench, at a certain Day, which may be accorded, and to deliver or send the Tenor of the Record to him under the Seal of the Chief Justice of the Place, at which Day he shall take the Inquest, and return the Verdict under his Seal with the Writ, the Tenor, and the Panel, which

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ITEM come avant ces heures soit establi qe les enquestes & jurrez qe sont aprendre aussibien de Bank le Roi come de commune Bank fuissent pris devant un ou deux Justices de meismes les places si come est contenuz en meisme les establissemantz & ja si est notoriement veu & conu qe diverses enquestes & jurrees ont este aprendre & encore sont en divers contees Engleterre ou nul Justice nest venu a grant meschief des parties qe suent & aussi des bones gentz du pays qe sont mys en panel par quoi est assentuz & establi qe qe ce soit qe demande le *Nisi prius* en Bank le Roi aussibien a la seute le defendant come de pleintiff come avant ces hures ad este fait par forme destatut qe lui soit le *Nisi prius* grante devant aucun Justice de la place ou le plee pent si aucun de la place peusse bonement aler en celles parties & si nemy adonques soit grante le *Nisi prius* devant aucun Justice du commune Bank au certain jour qe poest estre accorde & tenor du record a lui liverree ou mande desoutz le seal de chief de la Place a queu jour il preigne lenqueste & retourne le verdit desoutz son seal ovesqe le brief la tenour & le panell lequel soit receu en Bank le Roi & illoeques enroule & sur ce juggement rendu solonc le verdit de meisme lenqueste. Et eit le dit Justice nu commune Bank poair de recorder defautes & noun-

Ex. Rot. in Turr. Lond.

seutes auxi avant come le Nisi prius eust este grante devant ascun Justice du Bank le Roi apres queux defaultes issint recorderz & retournez en Bank le Roi aillent les Justices a judgement rendre de mesme le record. En mesme la manere soit fait de toutz les pleees que sont ou serront en commune Bank dont les enquestes & jureez sont ou serront aprendre en pays par le Nisi prius. Si nul des Justices de meisme la place ne y aille soit le Nisi prius grante devant ascun Justice du Bank le Roi affaire come devant est dit des Justices de commune Bank & la tenour du record a meisme celui Justice maunde qi eit autiel poair come devant est dit de Justice du commune Bank qest assigne aprendre les enquestes & jurrees du Bank le Roi. Et sil aveigne que nul des Justices del un Bank ne del autre ne puisse venir en pais la ou enquestes & jurrees sont aprendre adonques soit le Nisi prius grante devant le chief Baron del Eschequer sil soit homme de ley & eit autieu poair come les Justices del un Bank ou del autre ont par cest estatut. Et en cas que nul des Justices del un Bank ne del autre ne le chief Baron del Eschequer qi soit homme de lei ne viegne en pais ou les enquestes & jurrees sont ou serront aprendre par le Nisi prius adonques soit le Nisi prius grante devant Justices assignez a les assises prendre en celles parties issint toutes soitz que un des ditz Justices assignez soit Justice del un Bank ou del autre ou Serjant le Roi jurree & eient mesmes ces Justices autieu poair come de-

' shall be received in the
' King's Bench, and there en-
' rolled, and thereupon Judge-
' ment given according to the
' Verdict of the same Inquest.
' And the said Justice of the
' Common Bench shall have
' Power to record Defaults
' and Nonsuits, as far forth as
' if the *Nisi prius* had been
' granted before any Justice of
' the King's Bench; after which
' Defaults so recorded and re-
' turned in the King's Bench,
' the Justices shall go to give
' Judgement upon the same
' Record. And in the same
' Manner be it done of all
' the Pleas which be or shall
' be in the Common Bench,
' whereof the Inquests and Ju-
' ries be or shall be taken in
' the Country by *Nisi prius*.
' And if none of the Justices
' of the same Place go, the
' *Nisi prius* shall be granted
' before any Justice of the
' King's Bench, to do as afore
' is said of the Justices of the
' Common Bench; and the
' Tenor of the Record shall
' be sent to the same Justice,
' that he may have like Power
' as afore is said of the Justices
' of the Common Bench, which
' be assigned to take Inquests
' and Juries of the King's
' Bench. And if it happen
' that none of the Justices of
' the one Bench nor the other
' may come into the Country
' where Inquests or Juries be
' to be taken, then the *Nisi*
' *prius* shall be granted before
' the chief Baron of the Ex-
' chequer, if he be a Man of
' the Law, and he shall have
' such Power as the Justi-
' ces of the one Bench and
' the other have by this Sta-
' tute. And in case that none

No. 13.
14 Edward III.
c. 16.

Nisi prius may
be granted be-
fore a Justice of
another Court,
than where the
Suit dependeth.

No. 13.
14 Edward III.
c. 16.

Justices of Assise may give Judgement upon Assise, Quare impedit and Dattrain presentment.

‘ of the Justices of the one
‘ Bench nor the other, nor the
‘ chief Baron of the Exche-
‘ quer, being a Man of the
‘ Law, do not come into the
‘ County where the Inquests
‘ and Juries be or shall be
‘ taken by the *Nisi prius*, then
‘ the *Nisi prius* shall be granted
‘ before the Justices assigned
‘ to take Assises in those Parts;
‘ so always that one of the
‘ said Justices assigned be Jus-
‘ tice of the one Bench or the
‘ other, or the King’s Serjeant
‘ sworn: And the same Justi-
‘ ces shall have such Power as
‘ afore is said of the Justices
‘ of the one Bench and of the
‘ other. And if the one Party
‘ demand the Tenor of the
‘ Record to have with him, to
‘ deliver to the Justices before
‘ whom the *Nisi prius* is grant-
‘ ed, for to eschue that no
‘ Fraud or Damage to be done
‘ to the other Party, nor to the
‘ People of the Inquests, ano-
‘ ther Tenor of the same Re-
‘ cord shall be delivered to
‘ the other Party, if he the
‘ same require. And whereas
‘ it hath been another Time
‘ established, that the Justices
‘ before whom the *Nisi prius*
‘ hath been granted in Pleas
‘ of Assises, of *Dattrain pre-*
‘ *sentment*, and *Quare impedit*,
‘ should have Power to give
‘ the Judgements in the Coun-
‘ try upon the Verdicts of As-
‘ sise, and of Inquests, and
‘ upon Nonsuits and Defaults;
‘ it is assented, That the Jus-
‘ tices of the one Bench and of
‘ the other, the chief Baron of
‘ the Exchequer, and the Jus-
‘ tices assigned, before whom
‘ the *Nisi prius* is granted by
‘ this Statute, shall have Pow-
‘ er to give Judgements in

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vant est dit des Justices del
un Bank & del autre. Et si
lune partie demaunde la te-
nour du record devers lui avoir
pur liverer a le Justice devant
qi le *Nisi prius* est grante
pur eschure, qe fiau de ne da-
mage ne soit fait al autre par-
tie he as gentz del enqueste
soit un autre tenour de mesme
le record baillie a l’autre partie
sil le demande. Et come soit
autre foitz establi qe les Justi-
ces devant queux le *Nisi prius*
ad este grante es ptees dassi-
ses de darrein presentment et
quare impedit eient poair de
rendre les juggementz en pais
sur verditz dassise & denques-
te & sur nonseutes & defautes
si est assentuz qe les Justices
del un Bank & del autre chief
Baron del Eschequer & Justices
assignez devant queux le *Nisi*
prius este grante par cest estat-
ut eient poair de rendre les
juggementz en pais & ce re-
tourner selonc ce qest contenuz
en lestatut d’Everwyk sur co
fait.

' the Country, and return the No. 13.
' same according as it is con- 14 Edward III.
' tained in the Statute of York c. 10.
' thereupon made.'

No. 14.

The Oath of the Justices, being made Anno 18 Edw.
III. Stat. 4. and Anno Dom. 1344.

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VOUS jurez, qe bien & loialment servires a nostre Seignur le Roy & son peuple en loffice de Justice, & que loialment conseilieres nostre Seignur le Roy en sez besoignes. Et que vous ne conseilieres ne assentires a chose que luy purra tourner en damage ou desheriteson per queconque voye ou colour. Et que vous ne saveres le damage ou disheriteson de luy, que vous ne luy ferrez garnir per vous ou per autre. Et que vous terrez owel ley & execution de droit as toutes ses subgettez riches & povrez is avoir regard a quelconque person. Et que vous ne prendrez per vous ne per autre en prive nen apert don ne reward dor ne dargent ne dautre chose queconque, que a vostre profit pourra tourner, sil ne soit manger ou boire & ceo de petit value, de nul home qui avera plee ou proces pendaunt devaunt vous, taunt come cel proces serra issint pendant, ne apres pur cel cause. Et que vous ne prendres fee, tanque come vous serres Justice, ne robes de nul home grande ne petit, si non de Roy mesmes. Et qe vous ne direz conseil ne avyz a nulle grande ne petit, en nul cas ou le Roy est partie. Et en cas que ascuns, de quel

YE shall swear, That well No. 14.
' and lawfully ye shall 18 Edward III.
' serve our Lord the King and Stat. 4.
' his People in the Office of Justices of
' Justice, and that lawfully ye both Benches
' shall counsel the King in his shall serve the
' Business, and that ye shall King in their
' not counsel not assent to any Office.
' Thing which may turn him in
' Damage or Disherison by
' any Manner, Way, or Court.
' And that ye shall not know To warn the
' the Damage or Disherison King of any
' of him, whereof ye shall not Damage.
' cause him to be warned by To do Justice.
' yourself, or by other;
' that ye shall do equal Law,
' and Execution of Right, to
' all his Subjects, rich, and
' poor, without having Regard
' to any Person. And that ye To take no
' take not by yourself, or by Reward of any
' other, privily nor apertly, having a Suit.
' Gift nor Reward of Gold
' nor Silver, nor of any other
' Thing which may turn to
' your Profit, unless it be Meat
' or Drink, and that of small
' Value, of any Man that shall
' have any Plea or Process
' hanging before you, as long
' as the same Process shall be
' so hanging; nor after for the
' same Cause. And that ye
' take no Fee, as long as ye
' shall be Justice, nor Robes
' of any Man great or small,
' but of the King himself.
' And that ye give none Ad- To give no
' vice or Counsel to no Man Counsel where

No. 14.
18 Edward III.
stat. 4.

the King is a
Party.

To maintain
no Suit.

Not to deny
Right for Let-
ters.

To procure
the King's Pro-
fit.

The Penalty
of an Offender.

great nor small, in no Case where the King is Party. And in case that any of what Estate or Condition they be, come before you in your Sessions with Force and Arms, or otherwise against the Peace, or against the Form of the Statute thereof made, to disturb Execution of the Common Law, or to menace the People that they may not pursue the Law, that ye shall cause their Bodies to be arrested and put in Prison; and in case they be such that ye cannot arrest them, that ye certify the King of their Names, and of their Misprision hastily, so that he may thereof ordain a conveneable Remedy. And that ye by your self nor by other, privily nor apertly, maintain any Plea or Quarrel hanging in the King's Court, or elsewhere in the Country. And that ye deny to no Man common Right by the King's Letters, nor none other Man's, nor for none other Cause; and in case any Letters come to you contrary to the Law, that ye do nothing by such Letters, but certify the King thereof, and proceed to execute the Law, notwithstanding the same Letters. And that ye shall do and procure the Profit of the King and of his Crown with all Things where ye may reasonably do the same. And in case ye be from henceforth found in Default in any of the Points aforesaid, ye shall be at the King's Will of Body, Lands, and Goods, thereof to be done as shall please him, as God you help and all Saints.

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estate ou condition quilz soient, veignent devant vous en vos sessions a force & armes ou autrement contre la peas, ou contre la forme del estatut ent fait, pur distourber execution del commune ley, ou pur manascer lez gentz que ils ne purroient poursuivre la ley, que vous ferrez arrester leur corps, & mettre en prison. Et en cas quilz soient tielx que vous ne les pouvez arrester, que vous certifiez le Roy de leur nouns & de leur misprision hastivement, issint que il puisse ent ordeigner remealie conveneable. Et que vous ne maintiendres, per vous ne per autre en prive nen apert, nul plee ne nul querele pendant en le court le Roy naillours en pais. Et que vous ne declarez a nully come droit per lettres du Roy ne de nully autre ne per autre cause queconque. Et en cas que ascuns lettres vous veignent contrariez a la ley, que vous ne ferres riens per tielx lettres, cyens certifies le Roy de cec, & irrez avaunt, pur faire la ley, nient contresteauntz mesmes les lettres. Et que vous ferres & procures le profit du Roy & de sa Corone oye toutes les choses ou vous pouvez faire resonablement. Et en cas que vous soyez treuve en defaute desorenavant en nul des pointes avantditz, vous serres en la volunte du Roi du corpz terres & davoit, de faire ent que luy plerra. Si Dieu vous aide & toutes ses seyntes.

No. 15.

20 Edward III. c. 1. — The Justices of both Benches, Assise, &c. shall do Right to all Men, take no Fee but of the King, nor give Counsel where the King is Party.

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Si avoms ordeigne & commaunde expressement as toutz nouz Justices qils facent desore owel ley & execution de droit as toutz noz subjetz richiez & povrez saunz aver regard de null person & saunz lesser de faire droit pur null letrez ou maundementz qe lour purrout venir de nous ou de null autre ou pur autre cause qe conqz & en cas qe ascuns letrez briefs ou maundementz vieignent as lez Justices ou as autres deputez de faire ley & droit solongez lez usagez de nostre Roialme en destourbaunce de la ley ou de execution dicelle ou de droit faire as partiez lez ditz Justices & autres suisditz aillent avaunt & tieignent lour courts & lour processe et ou lour ples & busoignez sont pendantz devaunt eux come si nuls tielx letrez briefs ou maundementz ne tuisent venus et certifient nous e nostre conseil de tielx maundementz qe sount contrariez a la ley come desuis est dit. Et au fyn qe noz ditz Justices facent owel droit as toutz gentz en manere desuis dit saunz pluiz de favour faire a lune partie qe al autre Si avoms ordeigne & faire jurer noz Justices qils ne prendront desore tant come ils serrount en Office de Justice fee ne robe de nulluy sinoun de nous mesmez & qils ne prendront don ne regard per eux ne per autres en prive nen appiert de

FIRST, We have commanded all our Justices, That they shall from henceforth do equal Law and Execution of Right to all our Subjects, rich and poor, without having Regard to any Person, and without omitting to do Right for any Letters or Commandment which may come to them from us, or from any other, or by any other Cause. And if that any Letters, Writs, or Commandments come to the Justices, or to other deputed to do Law and Right according to the Usage of the Realm, in Disturbance of the Law, or of the Execution of the same, or of Right to the Parties, the Justices and other aforesaid shall proceed and hold their Courts and Processes where the Pleas and Matters be depending before them, as if no such Letters, Writs, or Commandments were come to them; and they shall certify us and our Council of such Commandments which be contrary to the Law, as afore is said. And to the Intent that our Justices should do even Right to all People in the Manner aforesaid, without more Favour shewing to one than to another, we have ordained and caused our said Justices to be sworn, That they shall not from henceforth, as long as they shall

No. 15.
20 Edward III.
c. 1.

Justices shall
do Right to all
Persons without
Regard of
Letters.

Shall certify
all illegal Com-
mandments.

No. 15.
20 Edward III.
c. 1.

Shall take no
Fee of any, but
of the King;

nor give Coun-
sel where the
King is Party.

Their Fees in-
creased.

be in the Office of Justice,
take Fee nor Robe of any
Man, but of ourself, and that
they shall take no Gift nor
Reward by themselves, nor
by other, privily nor apertly,
of any Man that hath to do
before them by any Way,
except Meat and Drink, and
that of small Value; and that
they shall give no Counsel to
great Men or small, in case
where we be Party, or which
do or may touch us in any
Point, upon Pain to be at
our Will; Body, Lands, and
Goods, to do theréof as
shall please us, in case they
do contrary. And for this
Cause we have increased the
Fees of the same our Justices
in such Manner, as it ought
reasonably to suffice them.

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null homme qe avera affaire
devaunt eux per queconqe voie
sil ne soit mangier ou boier &
ceo de petit value & qils ne
dorront counseill a null graund
ou petit en cas ou nous sumus
partiez ou qe nous touche ou
purra toucher en null manere
sur peyn destre a nostre vo-
lunte du corps terre & avoir
pur faire ent ceo qe nous pler-
ra en cas qils facent la con-
traire Et pur cest cause si
avoms fait encrescer lez fees
de noz Justices per tiel manere
qe lour doit resonablement
suffire.

No. 16.

20 Edward III. c. 2.—Barons of the Exchequer shall do
Right to all Men without Delay.

No. 16.
20 Edward III.
c. 2.

IN the same Manner we
have ordained in the
Right of the Barons of the
Exchequer, and we have ex-
pressly charged them in our
Presence, That they shall do
Right and Reason to all our
Subjects great and small; and
that they shall deliver the
People reasonably and with-
out Delay of the Business
which they have to do before
them, without undue tarrying
as hath been done in Times
past.

EN mesme la manere avoms
ordeigne en droit dez
Barons de nostre Eschequer
& les avoms fait expressement
charger en nostre presence qils
facent droit & reason as toutz
gentz grandz & petit & qils
facent delivrer le poeple rea-
sonablement & saunz delay
dez busoignez qils averount
affaire devaunt eux saunz estre-
tariez nounduement sicome ad
este fait en temps passe.

No. 17.

20 Edward III. c. 3.—Justices of Gaol-delivery, &c. and their Associates, shall take an Oath.

Ex Rot. in Turr. Lond.

ITEM nous avoms ordeigne
que toutz qe serrount assignez
Justices dassises prendre
en pays & Gaolez deliverer
& ceux qe serrount associez
a eux facent primerement au-
tiel serement en nostre Chaun-
cellerie devant qe commission
leur soit delivre.

ITEM, We have ordained,
That all they which shall
be Justices assigned by Com-
mission to hear and deter-
mine, and such as shall be
associated to them, and also
Justices of Assises to be taken
in the Country, and of Gaol-
delivery, and such as shall
be assigned and associated
to them, shall make first an
Oath in certain Points, ac-
cording as to them shall be
enjoined by our Council in
our Chancery, before that
any Commission be to them
delivered.

No. 17.
20 Edward III.

No. 18.

8 Richard II. c. 2. — No Man of Law shall be Justice of Assize, or Gaol-delivery, in his own Country.

ITEM concordatum est &
statutum quod nullus homo
de lege sit decetero Justitia-
rius assisarum vel communis
deliberationis gaolarum in pro-
pria patria sua & quod capita-
lis Justitiarius de communi
Banco assignetur inter alios ad
hujusmodi assisas capiendas &
ad gaolas deliberandas. Set
quo ad capitalem Justitiarium
de Banco Regis fiat sicut pro
majori parte centum annorum
proxime preteritorum fieri con-
suevit.

ITEM, it is ordained and
assented, That no Man
of Law shall be from hence-
forth Justice of Assises, or
of the common Deliverance
of Gaols in his own Country;
and that the chief Justice of
the Common Bench be as-
signed amongst other to take
such Assises and deliver
Gaols. But as to the Chief
Justice of the King's Bench,
it shall be as for the most
Part of an hundred Years
last past was wont to be
done.

No. 18.
8 Richard II.
c. 2.

No. 19.

8 Richard II. c. 3.—None of the Justices or Barons shall take any Fee or Reward but of the King, nor shall give Counsel where the King is Party, or in any Suit depending before them.

Ex Rot. in Turr. Lond.

No. 19.
8 Richard II.
c. 3.

ITEM cum nuper in tempore incliti Regis *Edwardi* Avi domini Regis nunc ordinatum fuisset quod Justitiarum quamdiu in officio Justiciorum forent non caperent feodum neque robam de aliquo preterquam de Rege & quod non caperent donum sive rewardum per ipsos vel per alios clam vel palam de aliquo qui coram eis haberet aliquid faciendum quacumque via exceptis cibo & potu modici valoris & quod non darent consilium alicui magno vel parvo in rebus vel negotiis ubi rex est pars vel que regem tangunt quoquo modo sub certa pena in ordinatione predicta contenta. Et eodem modo ordinatum fuisset de Baronibus de Scaccario prout in ordinatione predicta plenius continetur & dicta ordinatione in parlamento recitata concordatum est & statutum quod nullus Justitarius de Banco Regis vel de communi Banco nec aliquis Baronum de Scaccario quamdiu in officio Justitiarum vel Baronis fuerit capiat decetero per ipsum vel per alium clam vel palam robam feodum pensionem donum vel rewardum de aliquo preterquam de Rege nec exennium de aliquo preterquam exennium de cibo & potu quod non sit magni valoris. Et quod decetero non dent consilium alicui magno vel parvo in rebus vel negotiis in quibus rex est pars vel que regem tangunt quoquo modo & quod non sint de consilio alicujus in aliqua causa placito vel querela coram ipsis sive in aliquibus aliis magnis Curis vel placeis Regis pendente sub pena amittendi officium suum & faciendi Regi finem & redemptionem.

No. 20.

8 Richard II. c. 4. — The Penalty if a Judge or Clerk make a false Entry, rase a Roll, or change a Verdict.

No. 20.
8 Richard II.
c. 4.

ITEM, At the Complaint of the said Commonalty made to our Lord the King in the Parliament, for that great Disherison in Times past was done of the People, and may be done by the false entering of Pleas, rasing of Rolls, and changing of Verdicts; it is accorded and assented, That if any

ITEM ad querimoniam dicte communitatis factam domino Regi in parlamento de eo quod magna exheredatio retroactis temporibus pluribus de populo facta extitit & fieri poterit per falsam intrationem placitorum rasuras rotulorum & mutationem veredictorum concordatum est & statutum quod si aliquis iudex vel cleri-

Ex Rot. in Turr. Lond.

cus de hujusmodi defectu dummodo per defectum illum exheredatio alterius partium subsequatur sufficienter convincatur coram Rege & consilio suo per modum & formam quos idem dominus Rex & concilium suum tunc viderint fore rationabiles infra duos annos post defectum hujusmodi factum si pars gravata sit plene etatis & si infra etatem fuerit tunc infra duos annos postquam ad plenam etatem pervenerit puniatur per finem & redemptionem ad voluntatem Regis & satisfaciatur parti. Et quoad restitutionem hereditatis per dictam communitatem petitam sequatur pars gravata per breve de errore vel alias juxta legem si sibi viderit expedire.

Judge or Clerk be of such Default (so that by the same Default there ensueth Dishe-
rison of any of the Parties) sufficiently convict before the King and his Council, by the Manner and Form which to the same our Lord the King and his Council shall seem reasonable, and within two Years after such Default made, if the Party grieved be of full Age, and if he be within Age, then within two Years after that he shall come to his full Age, he shall be punished by Fine and Ransom at the King's Will, and satisfy the Party. And as to the Resti-
tution of the Inheritance desired by the said Commons, the Party grieved shall sue by Writ of Error, or otherwise, according to the Law, if he see it expedient for him.

No. 20.
8 Richard II.
c. 4.

No. 21.

9 Richard II. c. 1. — A Confirmation of all Statutes not repealed, saving of the Statute of 8 Rich. II. c. 3.

EN primes accordez est & assentuz qe touz les estatuz faitz par parlement en temps de les nobles progenitors nostre Seignur le Roi qore est & en son temps demesne sibien des viscontz south-viscontz eschetours & clers des viscontz come des purveours & tous autres bones estatuz & ordenances nient repellez par parlement soient fermement tenuz & gardez & due execution ent fait solonc leffecte dicelles forspris lestatut des Justices & Barons de leschequer fait en darrein parlement le quele a cause qil est

FIRST, it is accorded and assented, That all the Statutes made by the Parliament in the Times of the King's noble Progenitors, and in his own Time, as well of Sheriffs, Under-Sheriffs, Escheators, and Clerks of Sheriffs, as of Purveyors, and all other good Statutes and Ordinances not repealed by Parliament, shall be firmly holden and kept, and due Execution thereof done, according to the Effect of the same, except the Statute of the Justices and Barons of the Exchequer made at the last Par-

No. 21.
9 Richard II.
c. 1.

Ex Rot. in Turr. Lond.

- No. 21. 'liament, which because it is trop dure & embosoigne declaration le Roi voet qil soit de
9 Richard II. 'very hard, and needeth Declaration, the King will that nulle force tanqe soit declarez
c. 1. 'it be of no force till it be declared by Parliament.'

No 22.

20 Richard II. c. 3. — No Man shall sit upon the Bench with the Justices of Assise.

- No. 22. 'ITEM, The King doth will 'ITEM le Roy voet & de-
20 Richard II. 'and forbid, That no du pais petit ne grant ne soit
c. 3. 'Lord, nor other of the Count- seant en Bank ovesque les Jus-
'try, little nor great, shall sit tices as Assises prendre en
'upon the Bench with the leur sessions es contees d'Eng-
'Justices to take Assises, in leterre sur grief forfaiture vers
'their Sessions in the Counties le Roy & ad chargez ses ditz
'of *England*, upon great For- Justices qils ne soeffrent le
'feiture to the King; and hath contraire estre fait.
'charged his said Justices, that
'they shall not suffer the con-
'trary to be done.'(1.)

(1.) I have thought it eligible to insert this and the other preceding Numbers as Matter of Curiosity.—Mr. Barington, in Relation to this Statute, observes, that by the ancient Rules of the Parliament of Paris, no Member of that Body may frequent the Houses of Princes, or go to the Louvre; and that it is not usual with us, at present, for the puisne Judges to go to Court.

No. 23.

4 Henry IV. c. 23. — Judgements given shall continue until they shall be reversed by Attaint or Error.

- No. 23. 'ITEM, Where as well in 'ITEM come sibien en plee
4 Henry IV. 'Plea real as in Plea per- roial come personel apres
c. 23. 'sonal, after Judgement given jugement renduz en les cour-
'in the Courts of our Lord ties nostre Seigneur le Roy les
'the King, the Parties be parties sont faitz venir sur
'made to come upon grievous griefe peine a la foith devant
'Pain, sometime before the le Roy mesmes a la foith devant
'King himself, sometime be le conseil du Roy & a la foith
'fore the King's Council, and en parlement de ent respondre
'sometimes to the Parliament, de novel a grant anientisement
'to answer them of new, to des parties suisditz & en sub-
'the great Impoverishing of version de la commune loie de
'the Parties aforesaid, and in la terre ordeignez est & estab-
'the Subversion of the com- liz qapres jugement rendu en
'mon Law of the Land;" 'it les courtes nostre Seigneur le
'is ordained and stablished, Roy les parties & leur heirs

Ex Rot. in Turr. Lond.

en soient en pees tanqe le jugement soit anientiz par atteinte ou par erreur si erreur y ad come il ad este usez par la loic en temps des progenitours nostre dit Seignur le Roy.

' That after Judgement given
' in the Courts of our Lord the
' King, the Parties and their
' Heirs shall be thereof in
' Peace, until the Judgement
' be undone by Attaint or by
' Error, if there be Error, as
' hath been used by the Laws
' in the Times of the King's
' Progenitors.'

No. 23.
4 Henry IV.
c. 23.

No. 24.

13 Henry IV. c. 2.—A Confirmation of the Statute of 8 Rich. II. cap. 2. touching Justices of Assise and Gaol-delivery, for so long as it shall please the King.

ITEM ordeignez est & establis qe lestatut fait lan viij. le Roy Richard second en le quell sount contenuz les parols quenseuent : ' ITEM concordatum est & statutum quod nullus homo de lege sit de cetero Justitiarius assisarum vel communis deliberationis gaolarum in propria patria sua ei quod Capitalis Justitiarius de communi Banco assignetur inter alios ad hujusmodi assisas capiend' & gaolas deliberand' set quoad Capitalem Justiciarium de Banco Regis fiat sicut pro majori parte centum annorum proximo preteritorum fieri consuevit' soit tenuz & gardez nonobstant ascun estatut ou ordinance fait a contraire. Et qe nul Chief Justice de Banc le Roy soit ascunement en apres fait justice as assises prendre en ascun counte deinz le Roialme dEngleterre forspris en counte de Lancastre. Et qe cest estatut reigne force tancome y plerra au Roy pur salvation de sa prerogatif.

No. 24.
13 Henry IV.
c. 2.

No. 25.

11 Henry VII. c. 3.—The Justices of Assise in their Sessions, and the Justices of Peace in every County, upon Information for the King, shall have Authority to hear and determine all Offences and Contempts (saving Treason, Murder, or Felony) committed by any Person against the Effect of any Statute made, and not repealed.

No. 26.

32 Henry VIII. c. 21.—Trinity Term, and the Abbreviation thereof.

No. 26.
32 Henry VIII.
c. 21.

The Causes
of abbreviating
Trinity Term.

There shall
be only four
Days of Return
in Trinity
Term, and not
above.

‘WHERE the Term called *Trinity Term* of long Time hath been, and yet is, yearly used to be holden and kept in such Time and Season of the Year, that by Occasion thereof not only great Peril and Danger of Infection of the Plague, and sundry other Sicknesses have happened to the King’s loving Subjects, as well Nobles as other, but also hath been and yet is, a great Impediment and Let to a great Multitude of the King’s poor Subjects, for Provision and gathering in of Harvest, and other their necessary Business and Livings in that Season of the Year most expedient to be exercised.’ The King’s most Royal Majesty having especial Respect, as well to the Health as to the Wealth of his People, by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, ordaineth, enacteth and establisheth, That in the said *Trinity Term* shall be four common Days of Return only and not above; that is to say, the first Day of Return shall be, and be called, *In Crastino Sanctæ Trinitatis*; the second Day of Return of the same Term shall be, and be called, *In Octabis Sanctæ Trinitatis*; the third Day of Return of the same Term shall be, and be called, *In Quindena Sanctæ Trinitatis*; and the fourth Day of Return of the same Term shall be, and be called, *A die Sanctæ Trinitatis, in tres septimanas*; and that the same Days of Return shall be observed and kept in all our Sovereign Lord the King’s High Courts of Record hereafter to be holden at *Westminster*, or other Place or Places at the Assignment, Appointment or Agreement of our said Sovereign Lord, his Heirs or Successors; and that from or after the Feast of St. *Michael* the Archangel next coming, there shall not be, nor be called, any Days of Return *In Crastino Sancti Joannis Baptiste*, *Octabis Sancti Joannis Baptiste*, nor *Quindena Sancti Joannis Baptiste*, nor any of them.

When Trinity
Term shall be-
gin, and every
Return thereof.

II. And be it further enacted by the Authority aforesaid, That the said Term of the Holy *Trinity* shall yearly for ever, from the said Feast of St. *Michael* the Archangel next coming, begin the *Monday* next after *Trinity Sunday*, whensoever it shall happen to fall, for the keeping of the Essoins, Profers, Returns and other Ceremonies heretofore used and kept, in like Manner and Form as in Times past hath been used to be done in the Day of Return commonly called *In Octabis Sanctæ Trinitatis*; and that the full Term of the said *Trinity Term* shall yearly for ever begin and take his Commencement the *Friday* next after *Corpus Christi* Day, in such and in like Manner and Form, to all Purposes, Intents and Respects, as heretofore hath been used the *Wednesday* next after *Corpus Christi* Day; and that from and after the said Feast of St.

Michael the Archangel next coming, the said second and third Days of Return, called *Octabis Sanctæ Trinitatis*, and *Quindena Sanctæ Trinitatis*, shall take their Commencement and begin as in Times past hath been used; and the said fourth Day, called *A die Sanctæ Trinitatis in tres septimanas*, shall take his Commencement and begin from the same *Trinity Sunday* into three Weeks then next following, and shall have his Return with the fourth Day, as is accustomed in other like Days of Return.

No. 26.
32 Henry VIII.
c. 21.

III. And be it further enacted by the Authority aforesaid, That if after the said Feast of Saint *Michael* the Archangel next coming, any Writ in any real Action come in or be returnable into any of our said Sovereign Lord the King's Courts *In Octabis Sancti Hillarii*, then Day shall be given *In Crastino Sanctæ Trinitatis*; if in *Quindena Sancti Hillarii*, *In Octabis Sanctæ Trinitatis*: if *In Crastino Purificationis Beatæ Mariæ*, *In Quindena Sanctæ Trinitatis*; if *In Octabis Purificationis Beatæ Mariæ*, then *A die Sanctæ Trinitatis in tres septimanas*: and if after the same Feast of Saint *Michael* the Archangel any Writ in any real Action come into any of our said Sovereign Lord the King's Courts, returnable *In Crastino Sanctæ Trinitatis*, then Day shall be given *In Crastino Animarum*; if *In Octabis Sanctæ Trinitatis*, *In Crastino Sancti Martini*; if *In Quindena Sanctæ Trinitatis*, *In Octabis Sancti Martini*; if *A die Sanctæ Trinitatis in tres septimanas*, in *Quindena Sancti Martini*.

Days given in
real Actions.

IV. And be it further enacted by the Authority aforesaid, That if after the said Feast of Saint *Michael* the Archangel next coming, any Writ of Dower come into any of our Sovereign Lord the King's Courts, and be returnable in *Quindena Pasche*, then Day shall be given *In Crastino Sanctæ Trinitatis*; if *A die Pasche in tres septimanas*, *In Octabis Sanctæ Trinitatis*; if *A die Pasche in unum mensem*, in *Quindena Sanctæ Trinitatis*; if *A die Pasche in quinque septimanas*, or *In Crastino Ascensionis Domini*, then Day shall be given unto the Day of *A die Sanctæ Trinitatis in tres septimanas*. And if after the same Feast of St. *Michael* the Archangel next coming, any Writ of Dower come into any of our said Sovereign Lord the King's Courts of Record *In Crastino Sanctæ Trinitatis*, then Day shall be given *In Octabis Sancti Michaelis*; if *In Octabis Sanctæ Trinitatis*, *In Quindena Sancti Michaelis*; if *In Quindena Sanctæ Trinitatis*, *A die Sancti Michaelis in tres septimanas*; if *A die Sanctæ Trinitatis in tres septimanas*, *A die Sancti Michaelis in unum mensem*; or otherwise as is appointed, limited and declared by the Statute of *Marlebridge*, in the twelfth Chapter thereof made and provided.

Days given in
a Writ of
Dower.

V. And it is further enacted by the Authority aforesaid, That all Common Writs and Processes, as well personal as mixed, which shall fortune to be returnable in the said *Trinity Term*, shall have and keep the said Returns of *Crastino Sanctæ Trinitatis*, *Octabis Sanctæ Trinitatis*, *Quindena Sanctæ Trinitatis*, and *A die Sanctæ Trinitatis in tres septimanas*, or any one of them.

No. 26.
32 Henry VIII.
c. 21.

Where the
Justices may
assign special
Days for the
returning of
Writs.

Days given
in Assises of
Darrain Pre-
sentment,
Quare impedit
and Attaint.

VI. Provided always, and it is further enacted by the Authority aforesaid, That in such and like Cases and Processes, as special Days have been used to be appointed, assigned and given for the returning of Writs and Processes, it shall be lawful to the Justices of every of the King's said Courts of Record for the Time being, in all the Processes by them awarded, to assign and appoint special Days of Returns, as by their Discretions shall be thought convenient.

VII. Provided also, and be it further enacted by the Authority abovesaid, That the Days in Assise of *Darrain Presentment*, and in Plea of *Quare impedit*, limited and appointed by the Statute of *Marlebridge*, and also the Days to be given in Attaint, limited in the Statute made in the fifth Year of the noble King *Edward the Third*, being not contrariant to the Tenour of this Act, shall be holden firm and stable, and shall stand in their full Force and Effect.

No. 27.

33 Henry VIII. c. 24.—An Act that none shall be Justice of Assise in his own Country, &c.

No. 27.
33 Henry VIII.
c. 24.

The Reasons
for making of
this Statute,

‘WHERE in the Parliament holden in the eighth Year of King *Richard the Second*, it was enacted, ordained and established, That no Man learned in the Laws of this Realm should from thenceforth be Justice of Assise in the Country where he dwelleth; and that the Chief Justice of the Common Place should be from thenceforth assigned, among other Justices, to the taking of the said Assises; but as to the Chief Justice of the King's Bench, there should be done and used as hath been used for the most part for the Space of one hundred Years next before, as by the said Act more at large it doth and may appear: Since the making of which said good Act and Law, divers Justices and Men learned in the Laws of this Realm, by their own Means, Industry and Policy, and for their own Commodity and Ease, have obtained, contrary to the Form of the said Act, to be Justices of Assises in the Countries and Counties where they were born or were inhabiting, whereby some Jealousy of their Affection and Favour toward their Kinsmen, Alliance and Friends within the said Counties or Counties where they were so born or inhabiting, hath been conceived and had against them by the King's most loving Subjects of the same Countries and Counties:’

II. For Reformation whereof, the King's most loving Subjects and the Commons in this present Parliament assembled, most humbly beseech and desire the King's Majesty, and that it may be enacted by the King's Majesty, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That no Justice nor other Man learned in the

Laws of this Realm, shall at any Time from or after the Feast of *Easter* next coming, use nor exercise the Office of Justice of Assise within any County where the said Justice was born or doth inhabit, upon Pain to forfeit for every Offence done contrary to the Form of this present Act, one hundred Pounds; the Moiety whereof to be to our Sovereign Lord the King, and the other Moiety thereof to the Party that will sue for the same in any of the King's Courts, by Bill, Plaint, Information, Action of Debt or otherwise, in the which Suit no Protection, Essoin, nor Wager of Law shall be admitted nor allowed.

No. 27.
Henry VIII.
c. 24.

No Man shall be Justice of Assise in the County where he was born or doth dwell.

III. Provided alway, and be it further enacted by the Authority aforesaid, That this Act, or any Thing herein contained, shall not extend, be construed or interpreted, to touch or concern any Person or Persons that now are, or hereafter shall be, Clerk or Clerks of Assises, and shall be associate to any Justice of Assise, of or in any County, City or Town, within this Realm of *England*, wherein the same Person or Persons, Clerk or Clerks so associate, do dwell or were born; but that all and every Clerk and Clerks of Assises, which now do exercise or occupy, or hereafter shall exercise or occupy any Office or Clerkship of Assises, shall and may exercise and occupy the same in any County, City or Town, wherein the same Clerk or Clerks of Assises do dwell or were born; any Thing in this Act contained to the contrary notwithstanding.

This Statute doth not extend to the Clerk of Assise.

IV. Provided also, That these Terms, *Justices of Assises*, or other Persons learned in the Laws of this Realm, shall not extend or in any wise be interpreted to any Mayors, Sheriffs, Recorders, Stewards, Bailiffs, Sewters or other Officers, being born or dwelling within any City, Borough or Town within this Realm of *England*, but that they may be Justices of Assises of fresh Force, or of other Assises in the same City, Borough or Town where he or they do or shall dwell, or were born, as they or any of them before this Time have or might have been, to all Intents and Purposes; any Thing in this Act contained to the contrary notwithstanding.

Officers of Cities or Corporate Towns.

V. Provided always, That this Act, nor any Thing therein contained, shall be prejudicial to any Justice or Justices of the one Bench or the other, for taking, hearing, or determining Assises in the said Courts, in the one Bench or the other, nor to any Justice that shall take any Assise by or upon Adjournalment for Difficulty of the same.

Justices of both Benches.

VI. Provided alway, and be it enacted, That any Clerk of Assise during the only Time of the Session of or for any Assise or Assises, or of or for any *Nisi prius*, shall not be of Counsel with any Person or Persons within any Circuit whereof he shall be Clerk of Assise, otherwise than to that Office only appertaineth, upon Pain to forfeit for every Time offending contrary to this Statute, ten Pounds; the one Moiety thereof to be to the King our Sovereign Lord, and the other Moiety to the Party grieved, to be sued in any of the King's

No Clerk of Assise shall be of Counsel with any Person in that Circuit.

No. 27. Courts of Record, by Action of Debt, Bill, Complaint, Information or otherwise, in which Suit no Essoin, Protection, Wager of Law, or other dilatory Plea, shall be admitted or allowed.

33 Henry VIII. c. 24. VII. Provided also, and be it enacted by the Authority of the Justices, Justice Clerks, and Clerks of Assises in the County of Lancaster. aforesaid, That this Act or any Thing therein contained, extend not unto the Justices, Justice Clerks, or Clerk of Assises, within our Sovereign Lord the King's Duchy and County Palatine of *Lancaster*, nor to any of them that now be, or hereafter shall be; but that the same Justices, Justice Clerks, and Clerk, and every of them, shall and may execute their Offices, and every of them, in such Manner and Form as they, or any of them, have used to do before the making of this present Act; this Act or any Thing therein contained to the contrary thereof notwithstanding.

No. 28.

16 Charles I. c. 6. — An Act concerning the Limitation and Abbreviation of *Michaelmas* Term.

No. 29.

12 & 13 William III. c. 2. — An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subjects.

No. 29.
12 & 13 William
III. c. 2.

Conditions
for securing the
Religion, Laws,
&c. in Default
of Issue of the
Princess Anne
and the King.

III. **A**ND whereas it is requisite and necessary that some further Provision be made for securing our Religion, Laws and Liberties, from and after the Death of his Majesty and the Princess *Anne of Denmark*, and in Default of Issue of the Body of the said Princess, and of his Majesty respectively; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same,

‘ **T**HAT whosoever shall hereafter come to the Possession of this Crown, shall join in Communion with the Church of *England*, as by Law established.

‘ Repealed by
1 Geo. I. stat.
2. c. 51.’

‘ That in case the Crown and Imperial Dignity of this Realm shall hereafter come to any Person, not being a Native of this Kingdom of *England*, this Nation be not obliged to engage in any War for the Defence of any Dominions or Territories which do not belong to the Crown of *England*, without the Consent of Parliament.

‘ Repealed by
4 Anne, c. 8.
24.’

‘ That no Person who shall hereafter come to the Possession of this Crown, shall go out of the Dominions of *England*, *Scotland*, or *Ireland*, without Consent of Parliament.

‘ That from and after the Time that the further Limitation by this Act shall take Effect, all Matters and Things relating

‘ to the well governing of this Kingdom, which are properly
 ‘ cognizable in the Privy Council by the Laws and Customs
 ‘ of this Realm, shall be transacted there, and all Resolutions
 ‘ taken thereupon shall be signed by such of the Privy Council
 ‘ as shall advise and consent to the same. No. 29.
12 & 13 William
III. c. 2.

‘ That after the said Limitation shall take Effect as afore-
 ‘ said, no Person born out of the Kingdoms of *England, Scot-*
 ‘ *land, or Ireland,* or the Dominions thereunto belonging (al-
 ‘ though he be naturalized or made a Denizen, except such
 ‘ as are born of *English* Parents) shall be capable to be of the
 ‘ Privy Council, or a Member of either House of Parliament,
 ‘ or to enjoy any Office or Place of Trust, either Civil or
 ‘ Military, or to have any Grant of Lands, Tenements or
 ‘ Hereditaments from the Crown, to himself or to any other or
 ‘ others in Trust for him: ‘ This Clause
extends not to
Persons natura-
lized at or before
the Accession of
King Geo. 1. to
the Crown.’

‘ That no Person who has an Office or Place of Profit
 ‘ under the King, or receives a Pension from the Crown, shall
 ‘ be capable of serving as a Member of the House of Com-
 ‘ mons. ‘ Repealed by
4 Ann. c. 8. § 25.
6 Ann. c. 7.
1 Geo. 1. c. 56.’

‘ That after the said Limitation shall take Effect as aforesaid,
 ‘ Judges Commissioners be made Quamdiu se bene gesserint,
 ‘ and their Salaries ascertained and established; but upon the Address
 ‘ of both Houses of Parliament it may be lawful to remove them.

‘ That no Pardon under the Great Seal of *England* be
 ‘ pleadable to an Impeachment by the Commons in Parlia-
 ‘ ment.

‘ And whereas the Laws of *England* are the Birth-
 right of the People thereof, and all the Kings and Queens,
 who shall ascend the Throne of this Realm, ought to admin-
 ister the Government of the same according to the said
 Laws, and all their Officers and Ministers ought to serve
 them respectively according to the same:’ The said Lords
 Spiritual and Temporal, and Commons, do therefore further
 humbly pray, That all the Laws and Statutes of this Realm,
 for securing the established Religion, and the Rights and
 Liberties of the People thereof, and all other Laws and
 Statutes of the same now in Force, may be ratified and con-
 firmed, and the same are by his Majesty, by and with the
 Advice and Consent of the Lords Spiritual and Temporal,
 and Commons, and by Authority of the same, ratified and
 confirmed accordingly.

All Laws for
 securing the
 established Re-
 ligion, &c. con-
 firmed.

No. 30.

12 George II. c. 27.—An Act for explaining and amending an Act made in the eighth Year of the Reign of King *Richard* the Second, intituled, “No Man of Law shall be Justice of Assise or Gaol Delivery in his own Country;” and another Act made in the thirty-third Year of the Reign of King *Henry* the Eighth, intituled, “An Act that none shall be Justice of Assise in his own Country, &c.”

No. 30.

12 George II.
c. 27.

8 Ric. 2. c. 2.

33 Hen. 8. c. 24.

Judges im-
powered to act
as Judges of
Gaol Delivery,
&c. in their
own Counties.

‘**W**HEREAS by an Act made in the eighth Year of the Reign of King *Richard* the Second, intituled, “No Man of Law shall be Justice of Assise or Gaol Delivery in his own Country;” it is enacted, That no Man of Law shall from thenceforth be Justice of Assise, or of the common Deliverance of Gaols, in his own Country: And whereas by an Act made in the thirty-third Year of King *Henry* the Eighth, intituled, “An Act that none shall be Justice of Assise in his own Country, &c.” it is amongst other Things enacted, That no Justice nor other Man learned in the Law of this Realm shall use or exercise the Office of Justice of Assise within any County where the said Justice was born or doth inhabit, upon Pain to forfeit for every Offence done contrary to the said Act, one hundred Pounds: And whereas such Acts have been construed to extend, not only to Justices of Assise and Justices of Gaol Delivery, but also to Justices of *Nisi Prius*, and Justices of *Oyer and Terminer*; which Construction hath been attended with very great Inconveniences; For Remedy thereof be it enacted by the King’s most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful from Time to Time and at all Times hereafter, to and for the Chief Justice and Justices of either Bench, and to and for the Chief Baron, and other Barons of the Court of *Exchequer*, and to and for any other Person or Persons learned in the Law, who shall be appointed Justice or Justices of *Oyer and Terminer* or Gaol Delivery in any County or Counties within that Part of *Great Britain* called *England*, to use and exercise the Office or Offices of Justice or Justices of *Oyer and Terminer* or Gaol Delivery, in any such County or Counties, notwithstanding they or any of them shall have been born or do inhabit within any such County or Counties, and that they shall not be liable for so doing to the said Penalty or Forfeiture of one hundred Pounds, or to any other Forfeiture or Penalty whatsoever; any Thing in the said recited Acts, or either of them, or any other Law, Custom, or Usage to the contrary in any wise notwithstanding.

No. 31.

24 George II. c. 48. — An Act for the Abbreviation of
Michaelmas Term.

• **W**HEREAS in the Beginning of the Term of Saint
Michael, commonly called *Michaelmas Term*, very
 little Business can be done, on account of the several
 Holydays that are observed by the High Courts of Record
 of our Sovereign Lord the King, between the first Day
 of the said Term and the sixth Day of *November* following;
 Therefore, for the Ease and Benefit of his Majesty's Subjects,
 may it please your most Excellent Majesty that it may be
 enacted; and be it enacted by the King's most Excellent
 Majesty, by and with the Advice and Consent of the Lords
 Spiritual and Temporal, and Commons, in this present Par-
 liament assembled, and by the Authority of the same, That
 from and after the Feast Day of Saint *Michael* the Archangel
 in the Year of our Lord one thousand seven hundred and
 fifty-two, there shall be in *Michaelmas Term* four common
 Days of Return only (that is to say) the first Day of Return
 thereof shall be and be called the *Morrow of All Souls*; the
 second Day of Return of the same Term shall be and be
 called the *Morrow of Saint Martin*; the third Day of Return
 of the same Term shall be and be called In eight Days of
 Saint *Martin*; and the fourth Day of Return of the same
 Term shall be and be called In fifteen Days of Saint *Martin*.

No. 31.
 24 George II.
 c. 48.

Four com-
 mon Days of
 Return only to
 be in *Michaelmas*
Term;

II. And be it further enacted by the Authority aforesaid,
 That the same Days of Return shall be observed and kept in
 all the High Courts of Record of our Sovereign Lord the
 King, his Heirs and Successors; hereafter to be holden at
Westminster, or other Place or Places, at the Assignment or
 Appointment of our Sovereign Lord the King, his Heirs and
 Successors; and that from and after the Feast Day of Saint
Michael the Archangel in the Year of our Lord one thousand
 seven hundred and fifty-two, there shall not be nor be called
 any Days of Return from the Day of Saint *Michael* in three
 Weeks, nor from the Day of Saint *Michael* in one Month,
 nor either of them; and that the said Term of Saint *Michael*
 yearly for ever, from and after the said Feast of Saint *Michael*
 the Archangel one thousand seven hundred and fifty-two,
 shall begin in and upon the said *Morrow of All Souls* when-
 soever it shall happen to fall (except it be on the Lord's
 Day, commonly called *Sunday*), and then on the *Morrow*
 next after for the keeping of *Essoigns*, *Profers*, *Returns*, and
 other Ceremonies heretofore used and kept in like Manner
 and Form as hath been used to be done in the Day of the
 Return, commonly called From the Day of Saint *Michael*
 in three Weeks; and that the full Term of Saint *Michael*
 shall yearly for ever, from and after the said Feast of Saint
Michael one thousand seven hundred and fifty-two, in all the
 aforesaid Courts of Record, begin and take its Commence-

the same to be
 observed in all
 the Courts.

No Returns
 to be from *Michaelmas*
 Day in 3 Week, nor
 from that Day
 in 1 Month.

The Term to
 begin on the
Morrow of All
Souls,

and the full
 Term on the
 fourth Day af-
 ter, except those
 Days shall hap-
 pen on a Sunday.

No. 31. ment upon the fourth Day of the said Morrow of *All Souls*
 24 George II. (except it be on the Lord's Day, commonly called *Sunday*),
 c. 48. and then on the Morrow next after.

Days of Re-
 turns of Writs.

III. And for the more speedy proceeding in Writs of Dower *unde Nihil habet*, and Writs of Entry for common Recoveries to be sued and prosecuted by Writs of Entry or Writs of Right of Advowson, and in all other real Actions; Be it enacted by the Authority aforesaid, That after the Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two coming, if any Writ in any such Action come in, and be returnable in his Majesty's Court of *Common Pleas*, in the Day of the Return of the Morrow of *All Souls*, then Day shall be given in fifteen Days of Saint *Martin*; if on the Morrow of Saint *Martin* then in eight Days of Saint *Hilary*; if in eight Days of Saint *Martin*, then in fifteen Days of Saint *Hilary*; if in fifteen Days of Saint *Martin*, then on the Morrow of *The Purification*; if in eight Days of Saint *Hilary*, then in eight Days of *The Purification*; if in fifteen Days of Saint *Hilary*, then in fifteen Days of *Easter*; if on the Morrow of *The Purification*, then in three Weeks from the Day of *Easter*; if in eight Days of *The Purification*, then in one Month from the Day of *Easter*; if in fifteen Days of *Easter*, then in five Weeks from the Day of *Easter*; if in three Weeks from the Day of *Easter*, then on the Morrow of *The Ascension of our Lord*; if in one Month from the Day of *Easter*, then on the Morrow of the *Holy Trinity*; if in five Weeks from the Day of *Easter*, then in eight Days of the *Holy Trinity*; if on the Morrow of *The Ascension of our Lord*, then in fifteen Days of the *Holy Trinity*; if on the Morrow of the *Holy Trinity*, then in three Weeks from the Day of the *Holy Trinity*; if in eight Days of the *Holy Trinity*, then on the Morrow of *All Souls*; if in fifteen Days of the *Holy Trinity*, then on the Morrow of Saint *Martin*; if in three Weeks of the *Holy Trinity*, then in eight Days of Saint *Martin*.

In Writs of Dower, &c. after Issue joined, 15 Days sufficient between the Teste and Return of the *Venire*.

IV. Provided nevertheless, and be it further enacted by the Authority aforesaid, That in all Writs of Dower *unde nihil habet*, after Issue joined, it shall not be needful or requisite to have above fifteen Days betwixt the Teste and Return of the *Venire facias*, or any other Process to be sued out for the Trial of the said Issue, but that the Writ of *Venire facias*, and other Process, after Issue joined, until Judgment be given, having only fifteen Days between the Teste and Return thereof, shall be good and effectual in Law, as is used in Personal Actions; any Law, Statute, or Usage to the contrary heretofore notwithstanding.

Writs, &c. having Day from the Fourth of the Morrow of the Ascension to the Morrow of the Holy Trinity to be good.

V. And it is hereby further enacted by the Authority aforesaid, That from and after the said Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two, all Writs and Process hereafter to be made out of any of his Majesty's Courts at *Westminster*, and having Day from the fourth Day of the Morrow of *The Ascension*, to the Morrow of

the *Holy Trinity*, shall be good and effectual in Law, notwithstanding there be not fifteen Days between the Teste and the Return of the said Writs. No. 31.
24 George II.
c. 48.

VI. And be it further enacted by the Authority aforesaid, That all Writs or Process made, or to be made returnable upon the following Returns, *videlicet*; in three Weeks of Saint *Michael*, or from the Day of Saint *Michael* in one Month next following, or having Days between either of the said Returns, shall by force and virtue of this Act, have Day unto the said Morrow of *All Souls*, and the Parties to the said Writs and Process shall then appear, and plead and proceed thereupon to all Intents and Purposes, as if the said Writs and Process had been made returnable on the said Morrow of *All Souls*. Writs, &c. returnable in three Weeks of Saint Michael, or in one Month from that Day, to have Day unto the Morrow of All Souls.

VII. And be it further enacted, That all common Writs, as well personal as mixt, which shall happen to be returnable in the said *Michaelmas* Term, shall have and keep the said Returns of the Morrow of *All Souls*, the Morrow of Saint *Martin*, in eight Days of Saint *Martin*, and in fifteen Days of Saint *Martin*, or any of them. Days of Return of common Writs in the Term.

VIII. And whereas before the making of this Act, all Writs of Summons to warrant against the Vouchers upon common Recoveries had, in Writs of Entry and Writs of Right of Advowson, were made for five Returns inclusive: Now, for the more speedy perfecting of such Recovery, be it enacted by the Authority aforesaid, That from and after the said Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two, all and every such Writs of Summons to warrant upon the Appearance of the Tenant to every such Writ of Entry and Writ of Right of Advowson, shall and may be made and abridged to four Returns inclusive. Writs of Summons to warrant, abridged to four Returns inclusive.

IX. Provided always, and it is hereby further enacted by the Authority aforesaid, That in such and like Cases and Process as special Days have been used to be appointed and assigned and given for the Return of Writs and Process, it shall be lawful to the Justices of every the King's said Courts of Record for the Time being, in all the Process by them awarded, to assign and appoint special Days of Returns, as by them shall be thought convenient. Courts to appoint special Days of Returns where usual.

X. Provided also, and be it enacted by the Authority aforesaid, That the Days of Assise in *Darrein Presentment* and in a Plea of *Quare impedit* limited and appointed by the Statute of *Marlbridge*, and also the Days to be given in Attain limited in the Statute made in the fifth Year of the Reign of King *Edward* the Third, and also in the Statute made in the three and twentieth Year of the Reign of the late King *Henry* the Eighth, being not contrary to the Tenor of this Act, shall be holden firm, and stand in their full Force and Effect. Days of Assise in Darrein Presentment, &c. to stand.
5 Ed. 3. c. 6.
23 H. 8. c. 3.

XI. And whereas by divers Charters heretofore granted to the Citizens of *London*, by his Majesty's Royal Predecessors Kings and Queens of *England*, it is directed that the

No. 31. ' Mayor of the said City, after he is chosen, shall be pre-
 24 George II. ' sented and sworn before the King or Queen of England
 c. 48. ' in their Court of Exchequer at *Westminster*, or before the
 ' Barons of the said Court: And whereas the said Solemnity
 ' after every annual Election of the said Mayor, hath been
 ' usually kept and observed by the said City on the twenty-
 ' ninth Day of *October*, except the same fall on a *Sunday*,
 ' and then on the Day following; ' Be it enacted by the
 Authority aforesaid, That from and after the said Feast of
 Saint *Michael*, which shall be in the Year of our Lord one
 thousand seven hundred and fifty-two, the said Solemnity of
 presenting and swearing the Mayors of the City of *London*,
 after every annual Election into the said Office, in the Manner
 and Form heretofore used on the twenty-ninth Day of *October*,
 shall be kept and observed on the ninth Day of *November*
 in every Year, unless the same shall fall on a *Sunday*, and in
 that Case on the Day following; any Rule or Order in any
 of the Charters of the said City, or the Usage or Customs
 thereof to the contrary, notwithstanding.

The present-
 ing and swear-
 ing the Mayors
 of London to be
 on 9 November.

' XII. And whereas by the Abbreviation of *Michaelmas*
 Term pursuant to this Act, the Morrow of *All Souls* will
 ' not be in full Term, and thereby will prove inconvenient for
 ' the Purpose of ordaining Sheriffs pursuant to an Act of
 ' Parliament made in the fourteenth Year of the Reign of
 14 Ed. 3. c. 7. ' King *Edward* the Third, intituled, "How long a Sheriff
 ' shall continue in his Office;" Be it therefore enacted by the
 Authority aforesaid, That from and after the Commencement
 of this Act, the same Officers and Persons, who by virtue of
 the said last mentioned Act, or any other Law or Statute,
 ought to assemble at the Exchequer yearly on the Morrow of
All Souls, for the ordaining or nominating of Sheriffs, shall
 not assemble on that Day, but instead thereof shall assemble
 yearly on the Morrow of Saint *Martin* at the Exchequer, in
 the like Manner, and for the same Intent and Purpose.

The Day of
 assembling at
 the Exchequer
 for ordaining
 Sheriffs to be on
 the Morrow of
 Saint Martin.

No. 32.

1 George III. c. 23. — An Act for rendering more effec-
 tual the Provisions in an Act made in the twelfth and
 thirteenth Years of the Reign of his late Majesty
 King *William* the Third, intituled, "An Act for
 the further Limitation of the Crown, and better
 securing the Rights and Liberties of the Subject,"
 relating to the Commissions and Salaries of Judges.

No. 32. ' WHEREAS by an Act passed in the twelfth and thir-
 1 George III. ' teenth Years of the Reign of his late Majesty King
 c. 23. ' *William* the Third, intituled, "An Act for the further Limi-
 12 and 13 Will. ' tation of the Crown, and better securing the Rights and
 s. c. 2. ' Liberties of the Subject;" it was enacted, That after the

12 and 13 Will.
 s. c. 2.

‘ Limitation of the Crown thereby made should take effect,
 ‘ Judges Commissions be made *Quumdiu se bene gesserint*, and
 ‘ their Salaries ascertained and established; but upon the
 ‘ Address of both Houses of Parliament, it might be lawful to
 ‘ remove them: And whereas your Majesty has been gra-
 ‘ ciously pleased to declare from the Throne to both Houses
 ‘ of Parliament, that you look upon the Independency and
 ‘ Uprightness of Judges, as essential to the impartial Admi-
 ‘ nistration of Justice, as one of the best Securities to the
 ‘ Rights and Liberties of your loving Subjects, and as most
 ‘ conducive to the Honour of your Crown; and in conse-
 ‘ quence thereof, your Majesty has recommended it to the
 ‘ Consideration of your Parliament, to make further Provision
 ‘ for continuing Judges in the Enjoyment of their Offices
 ‘ during their good Behaviour, notwithstanding the Demise of
 ‘ your Majesty, or any of your Heirs and Successors; and
 ‘ your Majesty has also desired your faithful Commons that
 ‘ you may be enabled to secure the Salaries of Judges, during
 ‘ the Continuance of their Commissions: And whereas in
 ‘ return for this paternal Goodness, and in the justest Sense of
 ‘ your tender Concern for the Religion, Laws and Liberties
 ‘ of your People, we have taken this important Work into
 ‘ our Consideration, and have resolved to enable your Majesty
 ‘ to effectuate the wise, just, and generous Purposes, of your
 ‘ Royal Heart: May it therefore please your Majesty that it
 ‘ may be enacted;’ And be it enacted by the King’s most
 ‘ Excellent Majesty, by and with the Advice and Consent
 ‘ of the Lords Spiritual and Temporal, and Commons in this
 ‘ present Parliament assembled, and by the Authority of the
 ‘ same, That the Commissions of Judges for the Time being,
 ‘ shall be, continue, and remain, in full force, during their
 ‘ good Behaviour, notwithstanding the Demise of his Majesty
 ‘ (whom God long preserve) or of any of his Heirs and Succes-
 ‘ sors; any Law, Usage, or Practice to the contrary thereof in
 ‘ any wise notwithstanding.

No. 32.
 George III.
 c. 23.

Judges conti-
 nued during
 their good Be-
 haviour, not-
 withstanding
 any Demise of
 the Crown;

II. Provided always, and be it enacted by the Authority aforesaid, That it may be lawful for his Majesty, his Heirs, and Successors, to remove any Judge or Judges upon the Address of both Houses of Parliament.

but may be re-
 moved upon
 Address of
 Parliament.

III. And be it enacted by the Authority aforesaid, That such Salaries as are settled upon Judges for the Time being, or any of them, by Act of Parliament, and also such Salaries as have been or shall be granted by his Majesty, his Heirs, and Successors, to any Judge or Judges, shall, in all Time coming, be paid and payable to every such Judge and Judges for the Time being, so long as the Patents or Commissions of them, or any of them respectively, shall continue and remain in force.

Their Sala-
 ries secured.

IV. And be it further enacted by the Authority aforesaid, That such Salaries of Judges as are now or shall become payable out of the annual Rent or Sum granted for the Support of his Majesty’s Household, and of the Honour and Dignity of

- No. 32. the Crown, shall, from Time to Time, after the Demise of
 1 George III. his Majesty, or any of his Heirs and Successors, be charged
 c. 23. upon and paid and payable out of, such of the Duties or
 Revenues granted for the Uses of the Civil Government of
 his Majesty, his Heirs and Successors, as shall be subsisting
 after every such Demise respectively, until some further or other
 Provision be made by Parliament for the Expences of the
 Civil Government; and from and immediately after the
 making of such Provision, and during the Continuance there-
 of, such Salaries shall be paid and payable out of all or any
 of the Monies which shall be applicable to such Uses and
 Expences as aforesaid.

No. 33.

39 George III. c. 113. — An Act to enable such Persons
 as his Majesty may be pleased to appoint to the
 Office of Chief Justice, or of one of the Justices of
 either Bench, or of Chief Baron, or one of the
 Barons of the Exchequer, to take upon themselves
 the Degree of a Serjeant at Law in Vacation. [12th.
 July 1799.]

- No. 33. **W**HEREAS it is expedient whenever the Office of Chief
 39 George III. Justice, or of one of the Justices of either Bench,
 c. 113. or of Chief Baron, or one of the Barons of his Majesty's
 Exchequer, happens to be vacant, that a proper Person
 should be speedily appointed to such Office; and that such
 Person should be of the Degree of a Serjeant at Law, which
 Degree cannot be taken in Vacation; May it please your
 Majesty that it may be enacted; and be it enacted by the
 King's most Excellent Majesty, by and with the Advice and
 Consent of the Lords Spiritual and Temporal, and Commons,
 in this present Parliament assembled, and by the Authority of
 the same, That it shall and may be lawful for his Majesty, at
 any Time before the Commencement of the next Michaelmas
 Term, and during any succeeding Vacation, whilst the Office
 of Chief Justice, or of one of the Justices of either Bench, or
 of Chief Baron, or of one of the Barons of his Majesty's
 Exchequer, shall be vacant, from Time to Time, to cause a
 Writ to be issued out of his Majesty's High Court of Chan-
 cery, directed to any such Person, being a Barrister at Law,
 as his Majesty shall think fit, returnable immediately in the
 said Court, commanding such Person to appear in the said
 Court, and to take upon himself the State and Dignity of a
 Serjeant at Law; and such Person shall and may thereupon
 forthwith appear before the Lord High Chancellor, Lord
 Keeper, or Lords Commissioners for the Custody of the Great
 Seal for the Time being, at such Time and Place as the said
 Chancellor, Keeper, or Commissioners, shall appoint; and
 such Person so appearing, and taking the Oaths usually
- His Majesty during any Vacation, while the Office of Chief Justice, &c. is vacant, may cause a Writ to be issued out of the Court of Chancery to any Barrister at Law he shall think fit, to appear in that Court, and take upon himself the Dignity of a Serjeant at Law; and such Person shall, on taking the usual Oaths, be without further

administered to a Serjeant at Law, shall, without any further Act or Ceremony, be, and be deemed and taken to be, a Serjeant at Law, sworn to all Intents and Purposes: And in case his Majesty shall be pleased, by Writ or by Letters Patent under the Great Seal of *Great Britain*, to create or constitute any such Person, so to be sworn as aforesaid, Chief Justice of his Majesty's Court of King's Bench, or to grant to any such Person the Office of Chief Justice of his Majesty's Court of Common Pleas, or of one of the Justices of either Bench, or of Chief Baron, or of one of the Barons of his Majesty's Exchequer, every such Person shall be deemed and taken to be lawfully appointed to every such Office, and shall and may lawfully hold and enjoy the same, and do all Matters and Things whatsoever in such and the same Manner, to all Intents and Purposes, as if such Person had been a Serjeant at Law, sworn in the usual and ordinary Course.

No. 33.

George III.
c. 113.

Ceremony deemed a Serjeant at Law. His Majesty may grant to such Person the Office of Chief Justice of either Bench, &c.

No. 34.

49 George III. c. 91. — An Act to empower the Judges to try Civil Causes in their own Counties in *England*.
[10th. June 1809.]

WHEREAS by a Statute made in the eighth Year of the Reign of King *Richard the Second*, it is among other Things enacted, That no Man of Law shall from thenceforth be Justice of Assises in his own Country: And whereas by an Act made in the thirty-third Year of King *Henry the Eighth*, intituled, "An Act that none shall be Justice of Assise in his own Country," it is enacted, That no Justice nor other Man learned in the Laws of this Realm shall use nor exercise the Office of Justice of Assise within any County where the said Justice was born or doth inhabit: And whereas a Compliance with the aforesaid Provisions has been attended with great Inconveniences, for Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful from Time to Time and at all Times hereafter, to and for the Chief Justice and Justices of either Bench, and to and for the Chief Baron and other Barons of the Court of Exchequer, and to and for any other Person or Persons learned in the Law, who shall be appointed Justice or Justices of Assise in any County or Counties within that Part of *Great Britain* called *England*, to use and exercise the Office or Offices of Justice or Justices of Assise, and to act under any Commission of Nisi Prius in any such County or Counties, notwithstanding they or any of them shall have been born

No. 34.

George III.
c. 91.

8 R. 2. c. 2.

33 Hen. 8. c. 24.

Any Justice of either Bench or Baron of the Exchequer, or other Persons appointed, may be Justices of Assise in any County although they were born or do inhabit therein.

- No. 34. or do inhabit within any such County or Counties; and
49 George III. that they shall not be liable for so doing to any Forfeiture
c. 91. or Penalty whatsoever; any Thing in the said recited Laws, or
either of them, or any other Law, Custom, or Usage to the
contrary in anywise notwithstanding.

PART IV. CLASS II.

ATTORNIES.* — PROCHEIN AMY.

* By 5 George II. c. 18, Sec. 2, Attornies cannot act as Justices of Peace. See the Statute, Part VI. Title Justices of Peace.—By 12 George I. c. 29, Persons convicted of Perjury, or Forgery, practising as Attornies are subject to Transportation. See the Statute in the next Class.—The Acts respecting the Duties on Articles of Clerkship, and on Certificates of Attornies, do not fall within the Plan of the present Work.

No. 1.

20 Henry III. St. Merton, c. 10. — Attornies allowed to make Suit to several Courts.

Cotton MS.

PROVISUM. est insuper, quod quilibet liber homo, qui sectam debet ad Comitatum, [Trithingum,] Hundredum, & Wapentachium, vel ad Curiam domini sui, libere possit facere attornatum suum, ad sectas illas pro eo faciend.

IT is provided and granted, that every Freeman, which oweth Suit to the County, Trithing, Hundred, and Wapentake, or to the Court of his Lord, may freely make his Attorney to do those Suits for him.

No. 1.
20 Henry III.
c. 10.

No. 2.

6 Edward I. St. Gloucester, c. 8. — No Suit for Goods in the King's Courts under forty Shillings. Attorney may be made where an Appeal lieth not. The Defendant being essoined shall bring in his Warrant.

[Vide ante. Class 1. No. 3.]

F 2

No. 3.

13 Edward I. st. 1. (Westminster 2.) c. 10. — At what Time Writs shall be delivered for Suits depending before Justices in Eyre. Any Person may make a general Attorney.

No. 3.

13 Edward I.
st. 1. c. 10.

Delivering of
Writs for Suits
depending be-
fore Justices in
Eyre.

WHEREAS in the Circuit of Justices it was proclaimed, That all such as would deliver Writs, should deliver them within a certain Time, after which no Writ should be received; many trusting upon the same, and tarrying until the said Time, and no Writ served upon them, departed by Licence of the said Justices; after whose Departure their Adversaries, perceiving their Absence, delivered their Writs in Wax, which sometimes by Fraud, and sometimes for Rewards, be received of the Sheriff, and they, that thought to have departed quiet, lose their Lands." For the Remedy of such Fraud from henceforth, the King hath ordained, That the Justices in their Circuits shall appoint a Time of fifteen Days, or a Month, or a Time more or less (after as the County shall happen to be more or less) within which Time it shall be openly proclaimed, that all such as will deliver their Writs, shall deliver them before the same Time; and when the Time cometh, the Sheriff shall certify the Chief Justice in Eyre how many Writs he hath, and what, and that no Writ be received after the same Time; and if it be received, the Process issuing thereupon shall be of none Effect; but only that a Writ abated any Time during the Circuit may

Ex Rot. in Turr. Lond.

CUM in itinere Justiciariorum proclamatum fuerit quod omnes qui brevia liberare voluerint ea liberent infra certum terminum post quem nullum breve recipiatur multi de hoc confidentes cum moram fecerint usque ad predictum terminum & nullum breve super eos fuerit liberatum de licentia Justiciariorum recedunt post quorum recessum adversarii sui ipsorum absentiam percipientes brevia sua porrigunt in cera que aliquando per fraudem aliquando per vic' pro dono recipiuntur & alii qui secure credabant recessisse tenementa sua amittunt. Ut hujusmodi fraudi subveniatur imposterum statuit Dominus Rex quod Justitarii in itineribus suis statuam terminum quindecim dierum vel mensis minoris vel majoris termini secundum quod comitatus fuerit major vel minor infra quem terminum publice proclametur quod omnes qui brevia liberare voluerint ea liberent citra illum terminum & in adventu illius termini certificet vicecomes capitalem Justitiarium itineris quot brevia habent & que & quod ultra illum terminum nullum breve recipiatur quod si receptum fuerit processus per illud factus pro nullo habeatur excepto quod breve cassatum durante toto itinere relevari poterit brevia etiam de Dote de viris qui obierint infra summationem itineris assise Ultime presentationis Quare impedit decedens vacantibus infra sum-

Ex Rot in Turr. Lond.

monitionem predictam quocumque tempore ante recessum justitiorum brevia etiam Nove disseisine quocumque tempore facta fuerit disseisina recipiantur. In itineribus Justitiorum concedit Dominus Rex de gratia speciali quod illi qui tenementa habent in diversis comitatibus in quibus Justic' itinerant vel de quibusdam tenementis in comitatu in quo Justitii itinebant timent implacitari & de aliis tenementis in comitatu in quo Justitii non itinebant implacitantur coram Justitiis apud Westm' vel in Banco Domini Regis vel coram Justitiis ad assisas capiendas assignatis vel in aliquo comitatu coram vic' vel in aliqua curia Baronum facere possint attornatum generale ad sequendum pro eis in omnibus placitis in itinere Justitiorum pro ipsis vel contra ipsos motis vel movendis durante itinere qui quidem attornatus vel attornati habeant protestatem in placitis motis in itinere quousque placitum terminetur vel dominus suus ipsum amoverit nec per hoc excusentur si fuerint in juratis vel assisis coram eisdem Justitiis.

'be amended; also Writs of
'Dower of Men that died
'within the Summons of the
'Circuit, Assises of *Darrein*
'*presentment*, *Quare impedit*, of
'Churches vacant within the
'foresaid Summons, shall be
'received at any Time before
'the Departure of the Justices;
'also Writs of *Novel disseisin*,
'at what Time soever the Dis-
'seisin was done; shall be re-
'ceived *in the Circuit of Jus-*
'*tices*. Our Lord the King of
'his special Grace granteth,
'That such as have Land in
'divers Shires where the Jus-
'tices make their Circuit,
'and that have Land in
'Shires where the Justi-
'ces have no Circuit, that
'fear to be impleaded, and are
'impleaded of other Lands in
'Shires where they have no
'Circuit, as before the Justices
'at *Westminster*, or in the King's
'Bench, or before Justices as-
'signed to take Assises, or in
'any County before Sheriff,
'or in any Court Baron, may
'make a general Attorney to
'sue for them in all Pleas in
'the Circuit of Justices moved
'or to be moved for them, or
'against them during the Cir-
'cuit; which Attorney or At-
'torneys shall have full Power
'in all Pleas moved during
'the Circuit, until the Plea be
'determined, or that his Mas-
'ter remove him; yet shall
'they not be excused thereby,
'but they shall be put in Juries
'and Assises before the same
'Justices."

No. 3.
13 Edward I.
st. 1. c. 10.

Any Person
may make a ge-
neral Attorney.

No. 4.

13 Edward I. st. 1. (Westminster 2.) c. 15. — An Infant
eloined may sue by *Prochein Amy*.

IN omni casu quo minore
infra etatem implacitari

IN every Case whereas
such as be within Age

No. 4.
13 Edward I.
st. 1. c. 15.

No. 4.
13 Edward I.
st. 1 c. 15.
Eufant's Suit.

' may sue, it is ordained, That
' if such within Age be eloi-
' ned, so that they cannot sue
' personally, then next Friends
' shall be admitted to sue for
' them.'

Ex Rot. in Turr. Lond.

possunt concessum est quod si
hujusmodi minores elongati sint
quo minus personaliter sequi
possint propinquoires amici ad-
mittantur ad sequendum pro
eis.

No. 5.

12 Edward II. st. 1. c. 1. — Tenants in Assise of *Novel disseisin* may make Attornies.

No. 5.
12 Edward II.
st. 1. c. 1.

" **F**IRST, for divers Mis-
chiefs that have been
" because Tenants in Assise of
" *Novel disseisin* might not
" make Attornies heretofore :"
" it is agreed that the Tenants
" in Assise of *Novel disseisin*
" from henceforth may make
" Attornies. Yet the King in-
" tendeth not hereby that the
" Tenants and Defendants in
" Assises of *Novel disseisin*
" should not plead by Bailiffs,
" if they will, as they have
" used to do heretofore.

Pleading by
Bailiffs.

EN primes pur diverses
meschies qe unt estez
de ceo qe les tenantz en assises
de Novele disseisine ne poeint
avant ces heures fere attorne
Accorde est qe les tenantz en
brets de Novele disseisine de-
sore puissent fere attornez. Et
nentent mie le Roi par tant qe
les tenantz & les defendants en
assises de Novele disseisine ne
puissent pleder par bailif com
avant soleient sil voillent.

No. 6.

4 Henry IV. c. 18. — The Punishment of an Attorniey found in Default.

No. 6.
4 Henry IV.
c. 18.
What Sort of
Men shall be
Attornies.

" **I**TEM, For sundry Da-
mages and Mischiefs that
" have ensued before this Time
" to divers Persons of the
" Realm by a great Number
" of Attornies, ignorant and
" not learned in the Law, as
" they were wont to be
" before this Time ;" ' it is
" ordained and stablished, That
" all the Attornies shall be
" examined by the Justices,
" and by their Discretions their
" Names put in the Roll, and
" they that be good and ver-
" tuous, and of good Fame,

ITEM pur pleusours damages
& meschies qont advenuz
devaunt ces heures as diverses
gentz du Roialme par le grant
nombre des attournees nient
sachantz nprises de la loye
come ils soloient estre parde-
vant ordeignez est & establiz
qe toutz les attournees soient
examinez par les Justices &
par leur discrecions leur nouns
mys en rolle & ceux q sont
bons & virtuouses & de bone
fame soient receux & jurrez
de bien & loialement servir en
leur offices & en especial qils

Ex Rot. in Turr. Lond.

ne facent nulle suyte en foreine countee & soint les autres attornees oustez par la discretion des ditz Justices & qe leur meistres ove queux ils feurent attornees soient garniz de prendre autres en leur lieux parensi qen le mesme temps damage ne prejudice adviegne a leur ditz meistres. Et si aucun des ditz attournez devie ou cesse qe les Justices pur le temps estantz par leur discretion facent autre en son lieu q soit homme vertuous & sachant & jurrez en mesme le manere come dessus. Et si aucun tiel attournee soit notoirement treuve en defaut de record ou autrement en temps advenir qil forsuire la courte & qe jammais il ne soit resceu a nulle suite faire en aucune Courte de Roy & qe mesme ceste ordonnance soit tenuz en leschequer selonc la discretion del tresorer & des Barons illoeges.

shall be received and sworn well and truly to serve in their Offices, and especially that they make no Suit in a foreign County; and the other Attorneys shall be put out by the Discretion of the said Justices; and that their Masters, for whom they were Attornies, be warned to take others in their Places, so that in the mean Time no Damage nor Prejudice come to their said Masters. And if any of the said Attornies do die, or do cease, the Justices for the Time being by their Discretion shall make another in his Place, which is a vertuous Man and learned, and sworn in the same Manner as afore is said; and if any such Attorney be hereafter notoriously found in any Default of Record, or otherwise, he shall forswear the Court, and never after be received to make any Suit in any Court of the King. And that this Ordinance be holden in the Exchequer after the Discretion of the Treasurer, and of the Barons there.'

No. 6.
4 Henry IV.
c. 18.

No. 7.

4 Henry IV. c. 19. — No Officer of a Lord of a Franchise shall be Attorney in the same.

ITEM ordeignez est & establiz qe nul seneschall bailiff ne ministre des Seignurs des franchises qont retourne du brief soit attornee en nul plee deinz la franchise ou baillie dont il est ou serra tiel officer ou ministre en aucun temps advenir.

ITEM, It is ordained, That no Steward, Bailiff, nor Minister of Lords of Franchises, which have Return of Writs, be Attorney in any Plea within the Franchise or Bailiwick whereof he is or shall be Officer or Minister, in any Time to come.'

No. 7.
4 Henry IV.
c. 19.

No. 8.

7 Henry IV. c. 13. — Impotent Persons that be outlawed may make Attornies.

Ex Rot. in Tur. Lond.

No. 8.
7 Henry IV.
c. 13.

ITEM, Whereas many of the King's liege People be outlawed, and many waded, Ly erroneous Process in Law, and be so impotent in their Bodies, by divers Maladies and Infirmities, that they cannot come in their proper Persons before the King in his Bench, there to make their Suit to reverse such erroneous Process; it is ordained and established, That every Justice of the one Bench and of the other, and also the chief Baron of the Exchequer, shall have Power to examine the same Persons, having such Malady and Diseases openly known, and thereupon may the same Justices and Baron, and every of them, by their Discretion, record their Attornies in this Case. *Provided* always, That in the writ of *Capias ad satisfaciendum* the common Law shall hold Place.

Capias ad satisfaciendum

ITEM pur ceo qe plusours des lieges du Roy sont utlages & plousours waitez par proces erroine du loye & sont si impotentz de leurs corps par diverses maladies & infirmitées qils ne purront en leurs propres personnes venir devant le Roy en son Banc illoeges assaie leur seute pur tiel proces erroine reverser Ordeigne est & establiz qe chescun Justice de lun Banc & de lautre & auxi le Chief Baron de Le-chequer ait poair dexaminer ycelles personnes aiantz tiels maladies & infirmitées overtment connuz & sur ce purront mesmes les Justices & Baron & chescun de eux par leurs discretions recorder attourne en cest cas. Pourveux toutesloiz qen le breve de capias ad satisfaciend' courge la commune ley

No. 9.

Henry V. c. 4. — Sheriffs Bailiffs shall not be in the same Office in three Years after. Sheriffs Officers shall not be Attornies.

No. 9.
Henry V.
c. 4.

ITEM, For as much as the King's liege People dare not pursue or complain of the Extorsions and of the Oppressions to them done by the Officers of Sheriffs, that is to say, by Under-sheriffs, Clerks of Sheriffs, Receivers and Bailiffs of

ITEM pur ceo qe les lieges nostre Seignur le Roy uoient my pursuir ne compleindre des extorsions & oppressions a eux faitz par les ministres des viscountes cest a avoir par southvi-countz clerks des viscountes recepyvours & bailifs des viscountes a cause qe

Ex Rot. in Terr. Lond.

les ditz southviscountes clerks
resceivours & baillifs des vis-
countes sount sy continuelment
de an en an demurrauntz
ovesqe les viscountes enter-
changeablement en un office
ou en autre Nostre Seignur le
Roy de ladvis & assent suisdit
& a la request des ditz Com-
munes ad ordeigne & establiz
qe ceux qi sount baillifs des
viscountz par un an ne soient
en nul tiel office par les trois
ans proschein ensuantz fors-
pris les baillifs des viscountes
queux sont enheriteez en leur
viscountes & qe null south-
viscount ne clerk de viscount
resceivour ne baillif de viscount
soit attourne en aucun court de
Roy pur le temps qil est en
office au aucun tiel viscount.

" Sheriff, because that the said
" Under-Sheriffs, Clerks, Re-
" ceivers, and Bailiffs be con-
" tinually, from Year to Year,
" abiding with the Sheriffs in-
" terchangeably out of one
" Office into another;" " our
" Lord the King, by the Ad-
" vice and Assent aforesaid,
" and at the Request of the
" said Commons, hath ordain-
" ed and established, That they
" which be Bailiffs of Sheriffs
" by one Year, shall be in no
" such Office by three Years
" next following, except Bai-
" liffs of Sheriffs which be inhe-
" ritable in their Sheriffwickes.
" And that no Under-Sheriff,
" Sheriff's Clerk, Receiver,
" nor Sheriff's Bailiff, be Attor-
" ney in the King's Courts
" during the Time that he is in
" Office with any such Sheriff."

No. 9.
1 Henry V.
c. 4.

No. 10.

33 Henry VI. c. 7.—How many Attornies may be in
Norfolk, how many in *Suffolk*, and in *Norwich*.

ITEM cum de tempore a diu non elapso infra civitatem Nor-
wici & comitatus Norfolcie & Suffolcie nisi sex vel octo
communes attornati ad cur' Domini Regis divertentes ad maxi-
mum extitissent quo tempore magna tranquillitas in dictis
civitate et comitatibus regnabat parvaque tribulatio seu vexatio
per sectas minus veras vel forinsecas habebatur Jamque ita est
quod in dictis civitate et comitatibus quater viginti attornati vel
plures existunt majore parte ipsorum non habente aliquod aliud
vivere set solummodo lucrum suum per dictam occupationem
attornat' Ac etiam majore parte ipsorum non existente de suf-
ficienti scientia essendi attornat' qui ad unamquamque feriam
mercatum et alia loca ubi populi congregatio existit declinant
populum exortantes procurantes moventes & excitantes ad
sectas minus veras sectas forinsecas sectas pro parvis transgres-
sionibus parvis offensis & parvis summis de debito capiendis
quorum actiones sunt triabiles et determinabiles in curiis baro-
num unde quamplures secte potius ex mala voluntate & malitia
quam ex rei veritate procedunt in dictorum inhabitantium civi-
tatis et comitatum predictorum vexationem multiplicem damp-
naque non modica necnon omnium curiarum baronum in dictis

No. 10.
33 Henry VI.
c. 7.

A Practice of
contentious At-
tornies, to stir
up Suits for
their private
Profit.

No. 10.
33 Henry VI.
c. 7.

There shall
be but six com-
mon Attornies
in Norfolk, six
in Suffolk, and
two in Nor-
wich.

Justices of
Peace shall
have Authority
to inquire of
Offenders.

The Forfei-
ture of Offen-
ders.

Qu. If in Use?
Rast. Ent. 29.

comitatibus diminutionem perpetuam nisi de remedio in hac parte congruo provideatur. Prefatus Dominus Rex premissa considerans de avisamento assensu & auctoritate predictis ordinavit & stabilivit quod totis temporibus futuris sint nisi sex communes attornati in dicto comitatu Norfolkie & sex communes attornati in dicto comitatu Suffolcie & duo communes attornati in dicta civitate Norwici fore attornati in curia de recordo & quod omnes predicti quatuordecim attornati sint electi & admissi per duos Capitales Justitios Domini Regis pro tempore existentes de magis sufficientibus & optime instructis juxta discretionem suam & quod electio & admissio omnium attornatorum qui erunt electi & admissi per dictos Justitios pro tempore existentes ultra dictum numerum in comitatibus predictis sint vacue & de nulla auctoritate neque recordo & si sit aliqua persona vel persone que presumit vel presumunt aut usurpat vel usurpat super ipsas fore attornatos in curiis de recordo in dictis comitatibus vel civitate aliter quam superius specificatur & hoc sic invento per inquisitionem captam coram Justitiariis pacis in dictis civitate sive comitatibus qui virtute istius ordinationis potestatem inquirendi inde in sessionibus suis habebunt aut aliquo alio modo legitime probato quod tunc ipsa vel ipse que sic presumit vel presumunt si ipsa inde legitime sit convicta forisfaciat viginti libras totiens quotiens ipsa vel ipse sit vel sint convicti unam medietatem inde capiendae ad usum Domini Regis & alteram medietatem ad usum ipsius qui proinde prosequi velit et quod ipse qui proinde prosequi velit possit habere actionem de debito versus aliquam talem personam que sic presumit fore attornat ac tales processum & recuperationem in eadem quales jacent in actione de debito ad communem legem super obligatione. Proviso semper quod ordinatio predicta incipiat & primo sumat effectum ad festum Pasche proximo futurum & non ante si ordinatio illa Justitiariis videatur rationabilis.

No. 11

32 Henry VIII. c. 30.—Mispleadings, Jeofails.

No. 11.
32 Henry VIII.
c. 30.

This Act ex-
tendeth to all
Writs of Man-
damus, &c. by
9 Ann. c. 20.
§ 1.

FORASMUCH as the Party Plaintiffs and Demandants in all manner of Actions and Suits, as well real as personal, at the Common Law of this Realm, before this Time have been greatly delayed and hindered in their Suits and Demands, by reason of the crafty, subtle and negligent Pleadings of the Plaintiffs or Demandants, Defendants or Tenants, where any Action or Demand hath been sued, had or made, as well in misstating of their Declarations and Bars, as also in their Replications, Rejoinders, Rebutters, joining of Issues, and other Pleadings, to the great Hurry, Delay and Hindrance of the said Plaintiffs or Demandants, or to the vexation of the Defendants or Tenants; (2) inasmuch that in the Issues joined in the same Actions between the Par-

'ties to the same hath been tried and found by the Verdict of
 'twelve or mo indifferent Persons, for the said Plaintiffs or De-
 'mandants, or for the Tenants or Defendants, and the Justices
 'ready to give Judgment for the said Parties for whom the same
 'Issue was found, the same Parties have been compelled by
 'the Course and Order of the Common Law of this Realm
 'afore this Time, to replead, and the said Verdicts so given,
 'as is afore rehearsed, to be taken as void and of none effect;
 'sometime because the Issues have been misjoined, and Jeofail,
 'and sometime by taking Advantages of the Parties' own Mis-
 'pleading, or in the pursuing, miscontinuing or discontinuing
 'of Process of any of the Parties, and for divers other
 'Causes, the which is thought as well a great Slander to
 'the said Common Law of this Realm, and to the Ministers
 'of the same, as also a plain Delay and Hindrance unto
 'the said Parties, in that they should not have their
 'Judgments when the Issue hath been found and tried as is
 'aforesaid, to their great Costs and Charges:' (3) Be it there-
 fore enacted by the King our Sovereign Lord, the Lords Spi-
 ritual and Temporal, and the Commons, in this present Parlia-
 ment assembled, and by the Authority of the same, That from
 henceforth if any Issue be tried by the Oath of twelve or more
 indifferent Men, for the Party Plaintiff or Demandant, or for
 the Party of the Tenant or Defendant, in any Manner of
 Action or Suit at the Common Law of this Realm, in any of the
 King's Courts of Record, that then the Justice or Justices
 by whom Judgment thereof ought to be given, shall proceed
 and give Judgment in the same; (4) any Mispleading, Lack
 of Colour, insufficient Pleading or Jeofail, (5) or any Miscon-
 tinuance or Discontinuance, or Misconveying of Process, (6)
 Misjoining of the Issue, Lack of Warrant of Attorney for the
 Party against whom the same Issue shall happen to be tried, (7)
 or any other Default or Negligence of any of the Parties, their
 Counsellors or Attornies, had or made to the contrary notwith-
 standing; (8) and the said Judgments thereof, so to be had and
 given, shall stand in full Strength and Force to all Intents and
 Purposes, according to the said Verdict, without any Reversal
 or Undoing of the same by Writ of Error, or of false Judg-
 ment, in like Form as though no such Default or Negligence
 had never been had or committed.

No. 11.
 32 Henry VIII.
 c. 30

The several
 Inconveniences
 which have
 heretofore fol-
 lowed by De-
 lays in Suits.

After an Issue
 tried, there shall
 be Judgment
 given, notwith-
 standing any
 Jeofail or Mis-
 pleading.

II. Provided alway, and be it enacted by the Authority
 aforesaid, in avoiding of Errors and other great Inconve-
 niences that daily do fortune to arise and grow in the King's
 Courts of Record at *Westminster*, through the Negligence of
 Attornies, because they deliver not their Warrants of Attor-
 ney in such Actions and Suits, wherein they be named
 Attorney, according to the Laws of this Realm, (2) That all and
 every such Person and Persons, which shall fortune hereafter
 to be Attorney to or for any other Person or Persons, being
 Demandant or Plaintiff, Tenant or Defendant in any Action
 or Suit at any Time hereafter commenced or taken in any of
 the King's said Courts, and plead to an Issue in the same

When an At-
 torney shall en-
 ter his Warrant
 in Court.

No. 11. Action or Suit, that then the same Attorneys, and every of them, from Time to Time shall deliver, or cause to be delivered, his or their sufficient and lawful Warrant of Attorney, to be entered of Record, for every of the said Actions or Suits wherein they be named Attorneys, to the Officer or his Deputy, ordained for the Receipt and Entering thereof, in the same Term when the said Issue is entred of Record in the said Court, or afore, (3) upon Pain of forfeiting unto our said Sovereign Lord *x. l. Sterling* for every Default for not delivering of the said Warrant of Attorney.

Continued by
33 H. 8. c. 17.
37 H. 8. c. 23.
Made perpetual
by 2 & 3 Ed. 6.
c. 32. and 5 Geo.
1. c. 13.

III. And also further to suffer such Imprisonment, as by the Discretion of the Justices of the Court for the Time being, where any such Default shall fortune to be had or made, shall be thought convenient. This present Act, with the Proviso, to endure till the last Day of the next Parliament.

No. 12.

29 Elizabeth, c. 5.—An Act for the Continuance and Perfecting of divers Statutes.

No. 12.
29 Elizabeth,
c. 5.

XXI. PROVIDED always, that whereas divers her Majesty's loving Subjects dwelling in the remote Parts of this Realm are many Times maliciously troubled upon Informations and Suits, exhibited in the Courts of the King's Bench, Common Pleas and Exchequer, upon Penal Statutes, and are drawn up upon Process out of the Countries where they dwell, and driven to attend and put in Bail, to their great Trouble and Undoings; (2) For Reformation whereof, Be it enacted, That if any Person or Persons shall be sued or informed against, upon any Penal Law in any the several Courts of the King's Bench, Common Pleas or Exchequer, where such Person or Persons areailable by Law, or where by the Leave or Favour of the Court such Person or Persons may appear by Attorney, that in all and every such Cases, the Person or Persons so to be impleaded or sued, shall and may at the Day and Time contained in the first Process served for his Appearance, appear by Attorney of the same Court where the Process is returnable, to answer and defend the same, and not be urged to personal Appearance, or to put in Bail for the answering of such Suit, any former Law, Custom or Usage to the contrary notwithstanding.

The Defendant in Suits upon Penal Statutes may appear by Attorney.

This Branch extends not to Aliens.

No. 13.

31 Elizabeth, c. 10.—An Act for the Continuance and Perfecting of divers Statutes.

No. 13.
31 Elizabeth,
c. 10.
Elizabeth, c. 5.

XX. WHERE in the Parliament now last past holden at Westminster, an Act was then made, intituled "An Act for the Continuance and Perfecting of divers Statutes," in the End of which Act one Proviso is contained in these Words following, viz: Provided always that whereas

' divers her Majesty's loving Subjects dwelling in the remote
 ' Places of this Realm are many Times maliciously troubled
 ' upon Informations and Suits, exhibited in the Courts of
 ' King's Bench, Common Pleas and Exchequer, upon Penal
 ' Statutes, and are drawn up upon Process out of the Countries
 ' where they dwell, and driven to attend and put in Bail, to
 ' their great Troubles and Undoings: (2) For Reformation
 ' whereof, Be it enacted, That if any Person or Persons shall be
 ' sued or informed against upon any Penal Law, in any of the said
 ' Courts of the King's Bench and Common Pleas, or Exche-
 ' quer, where such Person or Persons are bailable by Law,
 ' or where by the Law or Favour of the Court such Person or
 ' Persons may appear by Attorney, that in all and every such
 ' Case, the Person or Persons so to be impleaded or sued,
 ' should and might at the Day and Time contained in the first
 ' Process served for his Appearance, appear by Attorney of
 ' the same Court where the Process is returnable, to answer
 ' and defend the same, and not to be urged to personal
 ' Appearance, or to put in Bail for the answering of such
 ' Suit; any former Law, Custom or Usage to the contrary
 ' notwithstanding; (3) Be it now enacted by the Authority of
 ' this present Parliament, That the same Branch of the said Act
 ' shall extend, and shall be interpreted, expounded and under-
 ' stood to extend, only to the natural Subjects born or to be
 ' born within the Dominions of the Queen's Majesty, her Heirs
 ' and Successors, and to Persons made free Denizens, and to
 ' no others; any Thing therein contained to the contrary in
 ' any wise notwithstanding.

No. 13.
 31 Elizabeth,
 c. 10.

The Statute
 of 29 Eliz. c. 5.
 touching ap-
 pearing by At-
 torney in Suits
 upon Penal
 Laws shall ex-
 tend only to
 natural born
 Subjects or Free
 Denizens.

No. 14.

3 James I. c. 7. — An Act to reform the Multitudes and
 Misdemeanors of Attornies and Solicitors at Law,
 and to avoid unnecessary Suits and Charges in Law.

' **F**OR that through the Abuse of sundry Attornies and Soli-
 ' citors by charging their Clients with excessive Fees,
 ' and other unnecessary Demands, such as were not, ne ought
 ' by them to have been employed or demanded, whereby the
 ' Subjects grow to be overmuch burthened, and the Practice of
 ' the just and honest Serjeant and Counsellor at Law greatly
 ' slandered: And for that to work the private Gain of such
 ' Attornies and Solicitors, the Client is oftentimes extraordi-
 ' narily delayed: Be it enacted by the Authority of this present
 ' Parliament, That no Attorney, Solicitor, or Servant to any,
 ' shall be allowed from his Client or Master, of or for any Fee
 ' given to any Serjeant or Counsellor at Law, or of or for any
 ' Sum or Sums of Money given for Copies to any Clerk or Clerks
 ' or Officers in any Court or Courts of Record at Westminster, (1.)
 ' unless he have a Ticket subscribed with the Hand and Name

No. 14.
 3 James I. c. 7.
 An Attorney
 shall have a
 Ticket of the
 Money which
 he giveth for
 Fees, &c.

(1.) The Statute does not extend to Business done in inferior C
 Brickwood v. Farushaw, Carth. 147.

No. 14. of the same Serjeant or Councillor, Clerk or Clerks, or Officers
 3 James I. c. 7. aforesaid, testifying how much he hath received for his Fee,
 or given or paid for Copies, and at what Time, and how often :
 A Bill of And that all Attornies and Solicitors shall give a true Bill unto
 Charges. their Masters (2.) or Clients, or their Assigns, of all other Charges
 concerning the Suits which they have for them, subscribed with
 his own Hand and Name, before such Time as they or any of
 them shall charge their Clients with any the same Fees or
 Charges : And that if the Attorney or Solicitor do or shall wil-
 lingly delay his Client's Suit to work his own Gain, or demand
 by his Bill any other Sums of Money, or Allowance upon his
 Account of any Money which he hath not laid out or disbursed,
 that in every such Case the Party grieved shall have his Action
 against such Attorney or Solicitor, and recover therein Costs
 and Treble Damages, and the said Attorney and Solicitor shall
 be discharged from thenceforth from being an Attorney or Soli-
 citor any more.

An Attorney
 delaying his
 Client's Suit,
 or demanding
 more than is
 due.

Who only
 shall be Attor-
 nies or Solici-
 tors.

No following
 of a Suit in an-
 other's Name.

II. And to avoid the infinite Numbers of Solicitors and
 Attornies, be it enacted by the Authority of this present Parli-
 ament, That none shall from henceforth be admitted Attornies
 in any the King's Courts of Record aforesaid, but such as have
 been brought up in the same Courts, or otherwise well prac-
 tised in soliciting of Causes, and have been found by their
 Dealings to be skilful and of honest Disposition : And that none
 to be suffered to solicit any Cause or Causes in any of the
 Courts aforesaid, but only such as are known to be Men of suf-
 ficient and honest Disposition : And that no Attorney shall
 admit any other to follow any Suit in his Name; upon Pain
 that both the Attorney and he that followeth any such Suit in his
 Name, shall each of them forfeit for such Offence twenty
 Pounds: the one Moiety whereof to our Sovereign Lord the
 King, his Heirs and Successors, and the other Moiety to the
 Party grieved, to be recovered in any the said Courts of
 Record aforesaid, by original Writ of Debt, Bill, Plaint, or
 Information, wherein no Manner of Escoin, Wager of Law,
 or Protection shall be allowed : And that the Attorney in
 such Case shall be excluded from being an Attorney for ever
 thereafter.

(2.) Business done by an Agent for an Attorney, is not within the Act ;
 Jones v. Price, 1 Selw. N. P. 140; Bridges v. Francis, Peake N. P. C. 1.

No. 15.

2 George II. c. 23.—An Act for the better Regulation of
 Attornies and Solicitors.

No. 15.
 2 George II.
 c. 23.

FOR the better Regulation of Attornies and Solicitors,
 practising in any of the Courts of Law or Equity, in that
 Part of Great Britain called *England*, Be it enacted by the
 King's most excellent Majesty, by and with the Advice and
 Consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the Authority of the same, That no Person from and after the first Day of *December* one thousand seven hundred and thirty, shall be permitted to act as an Attorney, or to sue out any Writ or Process, or to commence, carry on or defend, any Action or Actions, or any other Proceedings, either before or after Judgment obtained, in the Name or Names of any Person or Persons, in his Majesty's Court of King's Bench, Common Pleas, or Exchequer, or Dutchy of *Lancaster*, or in any of his Majesty's Courts of Great Sessions in *Wales*, or in any of the Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or in any other Court of Record in that Part of *Great Britain* called *England*, wherein Attornies have been accustomedly admitted and sworn, unless such Person shall take the Oath herein after directed and appointed to be taken by Attornies, and shall also be admitted and inrolled on or before the said first Day of *December* one thousand seven hundred and thirty, in such of the said Courts where he shall act as an Attorney, or shall be sworn, admitted and inrolled in the said respective Courts after the said first Day of *December* one thousand seven hundred and thirty, in such Manner as is herein after directed.

No. 14.
2 George II.
c 23.

No Person to be admitted an Attorney, unless he take the Oath, and be inrolled.

II. And be it further enacted by the Authority aforesaid, That the Judges of the said Courts respectively, or any one or more of them, shall, and they are hereby authorised and required, before they shall admit such Person to take the said Oath, to examine and inquire, by such Ways and Means as they shall think proper, touching his Fitness and Capacity to act as an Attorney; and if such Judge or Judges respectively shall be thereby satisfied, that such Person is duly qualified to be admitted to act as an Attorney, then, and not otherwise, the said Judge or Judges of the said Courts respectively, shall, and they are hereby authorised to administer to such Persons the Oath hereinafter directed to be taken by Attornies, and, after such Oath taken, to cause him to be admitted an Attorney of such Court respectively, and his Name to be inrolled as an Attorney of such Court respectively, without any Fee or Reward, other than one Shilling for administering such Oath; which Admission shall be written on Parchment in the *English* Tongue, in a common legible Hand, and signed by such Judge or Judges respectively, whereon the lawful Stamp shall be first impressed, and shall be delivered to such Person so admitted.

Judges to examine into his Capacity.

III. And be it further enacted by the Authority aforesaid, That no Person from and after the first Day of *December* in the Year of our Lord one thousand seven hundred and thirty shall be permitted to act as a Solicitor, or to sue out any Writ or Process, or to commence, carry on, solicit or defend any Suit, or any Proceedings, in the Name of any other Person, in any Court of Equity, either in his Majesty's High Court of Chancery, Court of Equity in the Exchequer Chamber, Court of the Dutchy Chamber of *Lancaster* at *Westminster*, or Courts of the Counties Palatine of *Chester*, *Lancaster*, *Durham*, or of the Great Sessions in *Wales*, or in any other

None to act as a Solicitor, unless he take the Oath, and be inrolled.

No. 14. inferior Court of Equity in that Part of *Great Britain*, called
 2 George II. *England*, unless such Person shall take the Oath herein after
 c. 23. directed and appointed to be taken by Solicitors in Courts
 of Equity, and shall also be admitted and inrolled on or
 before the said first Day of *December* one thousand seven hun-
 dred and thirty, in such of the said Courts of Equity, where
 he shall act as a Solicitor, or shall be sworn, admitted and
 inrolled after the said first Day of *December*, in such Manner
 as is herein after directed.

Court of Equi-
 ty to examine.

IV. And be it further enacted by the Authority aforesaid,
 That the Master of the Rolls, or two of the Masters of the
 Chancery, the Barons of the Court of Exchequer, the Chan-
 cellor of the Dutchy of *Lancaster*, and the Judges of the said
 other Courts of Equity for the Time being respectively, or any
 one or more of them, shall, and they are hereby authorized
 and required, before he or they shall admit any Person to take
 the said Oath, to examine and inquire, by such Ways and
 Means as he or they shall think proper, touching his Fitness
 and Capacity to act as a Solicitor in such Courts of Equity re-
 spectively; and if the said Master of the Rolls, or two Masters
 of the Chancery, the Barons of the Court of Exchequer,
 the Chancellor of the Dutchy of *Lancaster*, or the Judges of
 the said other Courts of Equity for the Time being, or any one
 or more of them respectively, shall be thereby satisfied, that
 such Person is duly qualified to be admitted to act as a Solici-
 tor in such Court of Equity, then, and not otherwise, the said
 Master of the Rolls, two Masters of the Chancery, the Barons
 of the Court of Exchequer, the Chancellor of the Dutchy of
Lancaster, and the Judges of the said other Courts of Equity
 for the Time being respectively, or any one or more of them,
 shall, and they are hereby authorized to administer to such
 Person the Oath herein after directed to be taken by Solicitors,
 and, after such Oath taken, to cause him to be admitted
 a Solicitor in such Court of Equity, and his Name to be inrolled
 as a Solicitor in such Court, without any Fee or Reward,
 other than one Shilling for administering such Oath, which
 Admission shall be written on Parchment in *English*, and in
 a common legible Hand, and signed by the Master of
 the Rolls, two Masters of the Chancery, the Barons of the
 Exchequer, the Chancellor of the Dutchy of *Lancaster*, and
 the Judges of the said other Courts of Equity respectively, or
 such of them who shall admit such Person to be a Solicitor,
 whereon a treble forty Shillings Stamp shall be first impressed,
 and shall be delivered to the Person so admitted.

None to act
 as an Attorney
 unless he has
 served a Clerk-
 ship, and been
 admitted.

V. And be it further enacted by the Authority aforesaid,
 That from and after the first Day of *December* one thousand seven
 hundred and thirty, no Person, who shall not before the said
 first Day of *December* have been sworn, admitted and inrolled,
 pursuant to the Directions of this Act, shall be permitted to act
 as an Attorney, or to sue out any Writ or Process, or to com-
 mence, carry on or defend any Action or Actions, or any Pro-
 ceedings, either before or after Judgment obtained, in the

Name or Names of any other Person or Persons, in any of the Courts of Law aforesaid, unless such Person shall have been bound, by Contract in Writing, to serve as a Clerk for and during the Space of five Years, to an Attorney duly and legally sworn and admitted, as herein before is directed, in some or one of the Courts herein before mentioned; and that such Person, for and during the said Term of five Years, shall have continued (1.) in such Service; and also unless such Person, after the Expiration of the said Term of five Years, shall be examined, sworn, admitted and inrolled, in the same Manner as the Persons, who shall be admitted Attornies of the said Courts, are herein before required to be examined, sworn, admitted and inrolled:

No. 14.
2 George II.
c. 23.

VI. And be it further enacted by the Authority aforesaid, That the Judges of the said Courts respectively, or any one or more of them, shall, and they are hereby authorized and required, before they shall admit such Person to take the said Oath, to examine and inquire, by such Ways and Means as they shall think proper, touching his Fitness and Capacity to act as an Attorney; and if such Judge or Judges respectively shall be thereby satisfied, that such Person is duly qualified to be admitted to act as an Attorney, then, and not otherwise, the said Judge or Judges of the said Courts respectively shall, and they are hereby authorized to administer, in open Court, to such Person, the Oath herein after directed to be taken by Attornies, and, after such Oath taken, to cause him to be admitted an Attorney in such Court, and his Name to be inrolled as an Attorney in such Court, without any Fee or Reward, other than one Shilling for administering such Oath, which Admission shall be written on Parchment in the English Tongue, in a common legible Hand, and signed by such Judge or Judges respectively, whereon the lawful Stamps shall be first impressed, and shall be delivered to the Person so admitted.

Judges before they admit them to take the Oath, to examine their Fitness.

VII. And be it further enacted by the Authority aforesaid, That from and after the first Day of December, one thousand seven hundred and thirty, no Person, who shall not, before the said first Day of December, have been sworn, admitted and inrolled, pursuant to the Directions of this Act, shall be permitted to act as a Solicitor, to sue out any Writ or Process, or to commence, carry on, solicit or defend, any Suit or Proceedings, in the Name or Names of any other Person or Persons, in any of the Courts of Equity aforesaid, unless such Person shall have been bound, by Contract in Writing, to serve as a Clerk for and during the Space of five Years, to a Solicitor duly and legally sworn and admitted, as herein before is directed, in some or one of the Courts of Equity aforesaid, and for and during the said Term of five Years shall have continued in such Service; and also unless such Person, after the Expiration of

None to act as a Solicitor before he has served a Clerkship, and been admitted.

(1.) This Provision is not complied with by the Clerk serving Part of the Time with another Attorney by his original Master's Consent; Ex Parte Hill, 7 T. R. 466.

No. 14.
2 George II.
c. 23.

the said Term of five Years, shall be examined, sworn, admitted and inrolled, in the same Manner, as Persons who shall be admitted Solicitors in the Courts of Equity aforesaid, are herein before required to be examined, sworn, admitted and inrolled.

Judges of the
Courts of Equity
to examine
Solicitors.

VIII. And be it further enacted by the Authority aforesaid, That the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity for the Time being respectively, or any one or more of them, shall, and they are hereby authorized and required, before he or they shall admit such Person to take the said Oath, to examine and inquire by such Ways and Means as he or they shall think proper touching his Fitness and Capacity to act as a Solicitor in Courts of Equity; and if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and such Judge or Judges of the said other Courts of Equity for the Time being respectively, shall be thereby satisfied, that such Person is duly qualified to be admitted to act as a Solicitor in such Court of Equity, then, and not otherwise, the said Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the said Judges of the said other Courts of Equity for the Time being respectively, or any one or more of them, shall, and they are hereby authorized to administer, in open Court, to such Person the Oath herein after directed to be taken by Solicitors, and, after such Oath taken, to cause him to be admitted a Solicitor in such Court of Equity, and his Name to be inrolled as a Solicitor in such Court, without any Fee or Reward, other than one Shilling for administering such Oath; which Admission shall be written on Parchment in the *English* Tongue, and in a common legible Hand, and signed by the Master of the Rolls, two Masters of the Chancery, the Barons of the Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity respectively, or such of them who shall admit such Person to be a Solicitor, whereon a treble forty Shillings Stamp shall be first impressed, and shall be delivered to the Person so admitted.

Not to exclude Persons from being admitted, who have, before 25 March, 1729, been bound for four Years.

IX. Provided always, and it is hereby enacted, That this Act, or any Thing herein before expressed and contained, shall not be taken or construed to exclude any Person from being sworn, admitted and inrolled to be an Attorney in any of the Courts of Law aforesaid, who hath, on or before the twenty-fifth Day of *March* one thousand seven hundred and twenty-nine, been bound by Contract in Writing to serve as a Clerk to any Attorney, or Person practising as such, in some or one of the Courts of Law aforesaid, for any Term not less than four Years; or from being sworn, admitted and inrolled, to be a Solicitor in any of the Courts of Equity aforesaid, who hath, on or before the said twenty-fifth Day of *March* one

thousand seven hundred and twenty-nine, been bound by Contract in Writing, to serve as a Clerk to any Person practising as a Solicitor in any of the Courts of Equity aforesaid, for any Term not less than four Years; so as such Writing, in case any Sum of Money hath been paid or given for or in respect of such Clerkship, hath the legal Stamp thereon impressed, and shall be registred in the Stamp-Office on or before the twenty-fifth Day of *March* one thousand seven hundred and thirty; but that any Person having been bound to serve as a Clerk to any Attorney, or Person practising as such, and having served as aforesaid, may, after the Expiration of the said Term of four Years, be examined, sworn, admitted and inrolled, to be an Attorney of any of the Courts of Law aforesaid, and any Person, having been bound to serve as a Clerk to any Person practising as a Solicitor, and having served as aforesaid, may, after the Expiration of the said Term of four Years, be examined, sworn, admitted and inrolled, to be a Solicitor in any of the Courts of Equity aforesaid, for the same Fee, and in the same Manner, as the Persons who shall be admitted Attornies or Solicitors, are herein before required to be examined, sworn, admitted and inrolled respectively; any Thing in this Act contained to the contrary notwithstanding.

No. 14.
2 George 11.
c. 23.

X. Provided also, and it is hereby further enacted, That it may be lawful, from and after the said first Day of *December*, one thousand seven hundred and thirty, for any Person, who shall be sworn, admitted and inrolled, to be an Attorney in any of the said Courts of King's Bench, Common Pleas, Exchequer, Courts of Great Sessions, Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or who shall be sworn, admitted and inrolled, to be a Solicitor in the said Court of Chancery, Court of Equity in the Exchequer Chamber, Court of the Dutchy Chamber of *Lancaster at Westminster*, Courts of Equity of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, and of the Great Sessions in *Wales*, or any of them, as herein before is directed, by and with the Consent and Permission of any Attorney in any of the said other Courts of Record at *Westminster*, Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, Courts of Exchequer at *Chester*, and Courts of the Great Sessions in *Wales*; such Consent being in Writing signed by such Attorney, and in the Name of such Attorney to sue out any Writ or Process, or to commence, carry on, prosecute or defend any Action or Actions, or any other Proceedings in such Court notwithstanding such Person is not sworn, or admitted to be an Attorney of such Court; any Law or Statute to the contrary notwithstanding.

Attornies with
Consent of an
Attorney of an
other Court,
may sue out
Writs, &c. in
such Court.

XI. Provided likewise, and it is hereby further enacted and declared, That nothing in this Act contained shall extend either to require or authorise any Judge or Judges of any Court of Record to swear, admit or inroll, any more or greater Number of Persons to be Attornies of such Court, than by the

No. 14. antient Usage and Custom of such Court hath been heretofore
2 George II. allowed.
c. 23

Clerks on
Deaths of their
Masters, &c.
may be turned
over.

XII. Provided also, and it is hereby further enacted, That if any Attorney or Solicitor, with and to whom any Person hath been or shall be bound by Contract in Writing as aforesaid, to serve as a Clerk for the Term of five Years, or four Years respectively, shall happen to die before the Expiration of the said five Years, or four Years, or if such Contract shall, by mutual Consent of the Parties, be vacated, or in case such Clerk be legally discharged by any Rule or Order of the Court, wherein such Attorney or Solicitor shall practise, before the Expiration of the said five Years, or four Years, then, and in any of the said Cases, if such Clerk shall by Contract in Writing be obliged to serve, and shall accordingly serve as a Clerk to any other Attorney or Solicitor respectively, who shall be sworn, admitted and inrolled as before directed, during the Residue of the said Term of five Years, or four Years, respectively, then such Service shall be deemed and taken to be as good and effectual, as if such Clerk had continued to serve as a Clerk for the Term of five Years, or four Years, to the same Person, to whom he was originally bound by Contract in Writing as aforesaid.

Attornies be-
fore Admission
to take the fol-
lowing Oath.

XIII. And it is hereby further enacted by the Authority aforesaid, That every Person who shall, pursuant to this Act, be admitted and inrolled to be an Attorney in the said Courts of King's Bench, Common Pleas, Exchequer, Great Sessions in *Wales*, Counties Palatine of *Chester*, *Lancaster* and *Durham*, or any inferior Courts of Record, wherein Attornies have been accustomedly admitted and sworn, shall before he is admitted and inrolled as aforesaid, take and subscribe the Oath following, instead of the Oath heretofore usually taken by the Attornies of such Courts respectively.

' I A. B. do swear, That I will truly and honestly demean myself in the Practice of an Attorney, according to the best of my Knowledge and Ability.

So help me God.

Solicitors to
take the Oath
following.

XIV. And it is hereby further enacted by the Authority aforesaid, That every Person who shall, pursuant to this Act, be admitted and inrolled to be a Solicitor in the said High Court of Chancery, or in any of the other Courts of Equity aforesaid, shall, before he shall be so admitted and inrolled, take and subscribe the Oath following: viz.

' I A. B. do swear, That I will truly and honestly demean myself in the Practice of a Solicitor, according to the best of my Knowledge and Ability.

So help me God.

XV. And be it further enacted by the Authority aforesaid, That from and after the first Day of *July* in the Year of our

Lord one thousand seven hundred and twenty-nine, no Attorney or Solicitor shall have more than two Clerks at one and the same Time, who shall become bound by Contract in Writing as aforesaid, after the said first Day of July, to serve him as Clerks.

No. 14.

2 George II.

c. 23.

No more than two Clerks at one Time.

XVI. And it is hereby further enacted and declared, That it shall and may be lawful to and for the several Prothonotaries of the Court of Common Pleas at *Westminster*, and the Secondary of the Court of King's Bench, and the several Prothonotaries of the respective Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, and the respective Courts of Great Sessions in *Wales*, to have three Clerks at one and the same Time, and no more; and that such respective Clerks, having served a Clerkship to any of the said Prothonotaries, or Secondary, for any Term not less than five Years, may, after the Expiration of such Term of five Years, be examined, admitted and inrolled, to be an Attorney of any of the Courts of Law aforesaid, and for the same Fee, and in the same Manner, as any other Person may be admitted and inrolled, who shall serve a Clerkship to any sworn Attorney for the Space of five Years, in case the Judge or Judges of the Court, before whom such Clerk shall be examined, be upon such Examination satisfied, that he is duly qualified to be admitted an Attorney of such Court; any Thing in this Act contained to the contrary notwithstanding.

Prothonotaries to have three.

XVII. And it is hereby also further enacted by the Authority aforesaid, That from and after the said first Day of *December* one thousand seven hundred and thirty, if any Person who shall be a sworn Attorney in any of the Courts of Law aforesaid, shall knowingly and willingly permit or suffer any other Person or Persons to sue out any Writ of Process, or to commence, prosecute, follow or defend any Action or Actions or other Proceedings in his Name, not being a sworn Attorney of one of the said other Courts of Law, or a sworn Solicitor of the said Court of Chancery, or of some or one of the Courts of Equity aforesaid, and shall be thereof lawfully convicted, every Person so convicted shall, from the Time of such Conviction, be disabled and made incapable to act as an Attorney in any of the Courts of Law aforesaid, and the Admittance of such Person to be an Attorney of any of the said Courts of Law shall from thenceforth cease and be void.

Attornies permitting others to issue out Writs, &c. disabled from Practice.

XVIII. And be it enacted by the Authority aforesaid, That from and after the first Day of *June* one thousand seven hundred and twenty-nine the Chief Clerk of the Court of King's Bench or his Deputy, the Clerk of the Warrants in the Court of Common Pleas or his Deputy, the Prothonotaries of the said respective Counties Palatine of *Lancaster*, *Chester*, and *Durham*, and of the Great Sessions in *Wales*, or their respective Deputies, and such Officers of the said inferior Courts of Law, as the Judge or Judges of the said inferior Courts respectively shall for that Purpose appoint, shall and they are hereby respectively required from Time to Time, without Fee or

Attornies and Solicitors to be inrolled in the proper Courts.

No. 14.
2 George II.
c. 23.

Reward, to inroll the Name of every Person who shall be admitted an Attorney in the said respective Courts of Law, pursuant to the Directions in this Act, and the Time when admitted, in an alphabetical Order, in Rolls or Books to be provided and kept for that Purpose in the said several and respective Offices; and also that the senior Clerk of the Petty-bag Office in the Court of Chancery or his Deputy, the King's Remembrancer of the Court of Exchequer or his Deputy, the Chief Clerk of the Court of the Dutchy Chamber of *Lancaster*, or his Deputy, the Registers of the respective Courts of Equity in the said Counties Palatine, and of the Great Sessions of *Wales*, or their respective Deputies, and such Officers of the inferior Courts of Equity, as the Judge or Judges of such inferior Courts respectively shall for that Purpose appoint, shall and they are hereby respectively required from Time to Time, without Fee or Reward, to inroll the Name of every Person who shall be admitted a Solicitor in the said respective Courts of Equity, pursuant to the Directions in this Act, and the Time when admitted, in an alphabetical Order, in Rolls or Books to be kept for that Purpose, in the said respective Offices in the said Courts of Equity; to which Rolls or Books in the said Courts of Law and Equity respectively all Persons shall and may have free Access without Fee or Reward.

Attornies to
be admitted
without Stamp,
if sworn before
1 June 1729.

XIX. Provided always, and it is hereby enacted, That the Admission of any Attorney in any of the Courts aforesaid, pursuant to the Directions in this Act, shall and may be written on Parchment without any Stamp impressed thereupon, in case he hath at any Time, on or before the first Day of *June* one thousand seven hundred and twenty-nine, been sworn and admitted an Attorney in any of the said Courts.

A sworn At-
torney may be
admitted a So-
licitor.

By 23 Geo. 2,
c. 26, sect. 15,
Solicitors may be
admitted Attor-
nies without
Fees.

XX. Provided also, and it is hereby further enacted, That from and after the first Day of *December* one thousand seven hundred and thirty, any Person who shall be sworn, admitted and inrolled to be an Attorney in any of the said Courts of King's Bench, Common Pleas, Exchequer, Counties Palatine of *Chester*, *Lancaster* and *Durham*, and Great Sessions in *Wales*, as herein before directed, may be sworn, admitted and inrolled to be a Solicitor in all or any of the Courts of Equity aforesaid, without any Fee for the Oath, or any Stamp to be impressed on the Parchment whereon such Admission shall be written, if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of *Lancaster*, and the Judges of the said other Courts of Equity for the Time being, or any of them respectively, shall, upon examining such Attorney touching his Fitness and Capacity to act as a Solicitor in Courts of Equity, be satisfied that such Attorney is duly qualified to be so admitted.

A sworn So-
licitor in one
Court of Equity
may be ad-
mitted into any
other Court.

XXI. Provided also, and it is hereby further enacted, That from and after the first Day of *December* one thousand seven hundred and thirty, any Person who shall be sworn, admitted and inrolled to be a Solicitor in any of the said Courts of

Chancery, Exchequer, Dutchy of Lancaster, Counties Palatine of Chester, Lancaster and Durham, and Great Sessions in Wales, as herein before directed, shall and may be sworn, admitted and inrolled to be a Solicitor in all or any of the said other Courts of Equity, or in any inferior Court of Equity, without any Fee for the Oath or any Stamps to be impressed on the Parchment whereon such Admission shall be written, in case the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Dutchy of Lancaster, and the Judges of the said other Courts of Equity for the Time being, or any of them respectively, shall, upon examining such Person touching his Fitness and Capacity to act as a Solicitor in Courts of Equity, be satisfied that such Person is duly qualified to be so admitted.

No. 14.
2 George II.
c. 23.

XXII. And be it further enacted by the Authority aforesaid, That from and after the first Day of July one thousand seven hundred and twenty-nine, every Writ and Process for arresting the Body, and every Writ of Execution, or some Label annexed to such Writ or Process, and every Warrant that shall be made out upon any such Writ, Process or Execution, shall, before the Service or Execution thereof, be subscribed or indorsed with the Name of the Attorney, Clerk in Court, or Solicitor, written in a common legible Hand, by whom such Writ, Process, Execution or Warrant respectively shall be sued forth; and where such Attorney, Clerk in Court or Solicitor shall not be the Person immediately retained or employed by the Plaintiff in the Action or Suit, then also with the Name of the Attorney or Solicitor so immediately retained or employed, to be subscribed or indorsed and written in like Manner; and that every Copy of any Writ or Process that shall be served upon any Defendant, shall, before the Service thereof, be in like Manner subscribed or indorsed, with the Name of the Attorney or Solicitor, who shall be immediately retained or employed by the Plaintiff in such Writ or Process.

The Name of the Attorney to be written on every Writ, &c.

XXIII. And be it further enacted by the Authority aforesaid, That from and after the first Day of July one thousand seven hundred and twenty-nine, no Attorney or Solicitor (2.) of any of the Courts aforesaid, shall commence or maintain any Action or Suit (3.) for the Recovery of any Fees, Charges, or Disbursements (4.) at Law or in Equity, (5.) until the

Attornies, &c. not to commence an Action for Fees till one Month after Delivery of their Bills.*

(2.) The Act does not extend to the Executors of an Attorney, B. N. P. 145.

(3.) The Delivery of the Bill, as here directed, is not necessary in order to Support a set-off; but the Bill ought to be delivered Time enough to have it taxed before the Trial; *Martin v. Winder*, Doug. 199. (n). A Commission of Bankrupt may be taken out on the Bill, notwithstanding an Order for Taxation, and staying Proceedings at Law; vi. *Martin v. Winder*, Moseley, 27.

(4.) Costs paid to the opposite Party are Disbursements within the Act; *Semble Hill v. Humphreys*, 2 B. & P. 343. Not Money paid pursuant to an Undertaking for Debt and Costs, in a Cause in which the Attorney was not concerned; *Prothero v. Thomas*, 1 Marshall, 539.

* See 12 G. II. c. 13. § 6, post. as to Business done by one Attorney for another.

(5.) The Act does not extend to Business done in Conveyancing extends to Drawing an Affidavit to hold to Bail, and Attendance at the Swear-

- No. 14. Expiration of one Month or more, after such Attorney or Solicitor respectively shall have delivered unto the Party or Parties to be charged therewith, or (6.) left for him, her, or them, at his, her, or their Dwelling-house, (7.) or last Place of Abode, (8.) a Bill (9.) of such Fees, Charges and Disbursements, written in a common legible Hand, and in the English Tongue (except Law Terms and Names of Writs) and in Words at length, (10.) (except Times and Sums) which Bill shall be subscribed with the proper Hand of such Attorney or Solicitor, respectively; and upon Application of the Party or Parties chargeable by such Bill, or of any other Person in that Behalf authorized, unto the said Lord High Chancellor, or the Master of the Rolls, or unto any of the Courts aforesaid, or unto a Judge or Baron of any of the said Courts respectively, in which the Business contained in such Bill (11.) or the greatest Part thereof in Amount or Value,

ing; *Winter v. Payne*, 6 T. R. 645: and it was there said, that the Act being beneficial to the Subject, ought to have a liberal Construction. It extends to Business done at the Quarter Sessions; *Ex parte Williams*, 4 T. R. 496; *Clarke v. Donovan*, 5 T. R. 694: to a *Dedimus Potestatem*, to take the Acknowledgement of a Fine; *Stookes v. Mason*, 1 H. Bl. 290. As to Attendance and Consultation respecting a Suit depending, *Qu. v. Mowbray v. Fleming*, 11 E. 285.

(6.) Where the Plaintiff delivered his Bill to the Defendant, who acknowledged the Debt, and said he would pay it, but that he did not know what to do with the Bill; upon which the Plaintiff took it back; it was held that it ought to have been left; *Brookes v. Mason*, *ut sup.* The Reporter states, in a Note, that there was no Proof that the Defendant desired him to take it back again; but what is stated would certainly seem to amount to that. The Court, so far as appears, took no Notice of the disjunctive Expression of the Act: and in *Crowder v. Shee*, 1 Camp. N. P. 437, it was held, that notwithstanding the Attorney showed his Client a Copy of the Bill, and explained the Charges, in which the Client acquiesced, the Attorney was bound to leave a Copy of the Bill. Where several are jointly liable, a Delivery to one by whose Instructions the Business was done is sufficient; see *Finchett v. How*, 2 Camp. N. P. 377.

(7.) Leaving at the Counting-house is not sufficient; *Hill v. Humphreys*, 2 B. & P. 343.

(8.) If there is a Duplicate of the Bill, it may be given in Evidence without Notice to produce the Part delivered; but there not being such Duplicate, Evidence from Entries in the Plaintiff's Books is not admissible without such Notice.

(9.) The Court of C. P. held Delivery of an Attorney's Bill to be conclusive Evidence, on the Taxation of Costs, against an Increase of Charge in a subsequent Bill, on any of the Items contained in it; and strong presumptive Evidence against any additional Items; *Lovell v. Botham*, 1 B. & P. 49.

(10.) See 12 Geo. II. c. 19, post, § 6.

(11.) If a Bill contain any one Item subject to Taxation, it is settled by several Cases that the Whole must be taxed; *Winter v. Payne*, 6 T. R. 645: *Hill v. Humphreys*, 2 B. & P. 343; *Mowbray v. Fleming*, 11 East, 285: and Lord Eldon, in *Hill v. Humphreys*, said "I do not enter into the Question, whether if any Item, not connected with the Profession of an Attorney, had been included, the Plaintiff would have been precluded from recovering upon them." Perhaps, however, we should not feel great difficulty in holding, that an Attorney who inserts his whole Demand upon his Client in a Bill containing taxable Items, shall be taken to agree that he will not bring an Action upon any Part of such Demands, until the Bill had been delivered a Month; but if an Attorney have a Demand for taxable Business

shall have been transacted; and upon the Submission of the said Party or Parties, or such other Person authorized as aforesaid to pay the whole Sum, that upon Taxation of the said Bill shall appear to be due to the said Attorney or Solicitor respectively, it shall and may be lawful for the said Lord High Chancellor, the said Master of the Rolls, or for any of the Courts aforesaid, or for any Judge or Baron of any of the said Courts respectively, and they are hereby required to refer the said Bill, and the said Attorney's or Solicitor's Demand thereupon (although no Action or Suit shall be then depending in such Court touching the same) to be taxed and settled by the proper Officer of such Court, without any Money being brought into the said Court for that Purpose; and if the said Attorney or Solicitor, or the Party or Parties chargeable by such Bill respectively, having due Notice, shall refuse or neglect to attend such Taxation, the said Officer may proceed to tax the said Bill *ex parte* (pending which Reference and Taxation no Action shall be commenced or prosecuted touching the said Demand) and, upon the Taxation and Settlement of such Bill and Demand, the said Party or Parties shall forthwith pay to the said Attorney or Solicitor respectively, or to any Person by him authorised to receive the same, that shall be present at the said Taxation, or otherwise unto such other Person or Persons, or in such Manner as the respective Court aforesaid shall direct, the whole Sum that shall be found to be or remain due thereon, which Payment shall be a full Discharge of the said Bill and Demand; and in Default thereof the said Party or Parties shall be liable to an Attachment or Process of Contempt, or to such other Proceedings, at the Election of the said Attorney or Solicitor, as such Party or Parties was or were before liable unto; and if, upon the said Taxation and Settlement, it shall be found that such Attorney or Solicitor shall happen to have been over paid, then in such Case the said Attorney or Solicitor respectively shall forthwith refund and pay unto the Party or Parties intitled thereunto, or to any Person by him, her, or them authorized to receive the same, if present at the settling thereof, or otherwise unto such other Person or Persons, or in such Manner as the respective Court aforesaid shall direct, all such Money as the said Officer shall certify to have been so over paid; and in Default thereof the said Attorney or Solicitor respectively shall in like Manner be liable to an Attachment or Process of Contempt, or to such other Proceedings, at the Election of the said

No. 14.
2 George II.
c. 23.

Judges, &c.
to refer Bills to
be taxed, with-
out Money be-
ing brought into
Court, &c.

and also for Conveyancing, and deliver no Bill, it seems he may recover for the Conveyancing; *vi. Hill v. Humphreys*; *Miller v. Towers-Peake*, N. P. 102. There being no other Bill delivered than the Particulars under a Rule of Court, it was ruled in *Mowbray v. Fleming*, 11 E. 285, that an Item for Money paid, unconnected with the Business of an Attorney, might be recovered; *vi. Benton v. Gurican*, 3 Esp. N. P. Cas. 149.

The Items of the Bill cannot be examined at *Nisi Prius*; *Williams v. Frith*, Doug. 197; *Hooper v. Tell*, Doug. 198; but the Bill may be taxed after Action brought, and at any Time before the Verdict or Judgment, unless the Money has been paid into Court; *Shaw v. Pickering*, Doug. 196 (n).

No. 14.
2 George II.
c. 23.

Party or Parties, as he would have been subject unto, if this Act had not been made; and the said respective Courts are hereby authorized to award the Costs of such Taxations to be paid by the Parties, according to the Event of the Taxation of the Bill (that is to say) if the Bill taxed be less by a sixth Part than the Bill delivered, then the Attorney or Solicitor is to pay the Costs of the Taxation; (12.) but if it shall not be less, the Court in their Discretion shall charge the Attorney or Client, in regard to the Reasonableness or Unreasonableness of such Bills.

Attornies, &c.
in their own
Name suing out
any Writ, &c.
not inrolled,
forfeit 50l.

XXIV. And be it further enacted, That from and after the first Day of December one thousand seven hundred and thirty, in case any Person shall, in his own Name, or in the Name of any other Person, sue out any Writ or Process, or commence, prosecute or defend any Action or Suit, or any Proceedings, in any of the Courts of Law or Equity aforesaid, as an Attorney or Solicitor, for or in Expectation of any Gain, Fee or Reward, without being admitted and inrolled as aforesaid, every such Person, for every such Offence, shall forfeit and pay fifty Pounds to the Use of such Person who shall prosecute him for the said Offence, and is hereby made incapable to maintain or prosecute any Action or Suit in any Court of Law or Equity for any Fee, Reward or Disbursement on Account of prosecuting, carrying on or defending any such Action, Suit or Proceeding.

Forfeitures
how to be reco-
vered.

XXV. And be it further enacted by the Authority aforesaid, That the Penalties and Forfeitures incurred by any Person offending against this Act, may be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at Westminster, or in any of the Courts of Record of and for the Countie Palatine of Chester, Lancaster and Durham, or in any of the Courts of Great Sessions in Wales, for Offences committed within the Jurisdiction of such Courts respectively, or at the Assizes or General Quarter-Sessions of the Peace of the County, Riding or Division where such Offence shall be committed, by any Person who shall sue for the same within twelve Months after such Offence committed, together with treble Costs of Suit, wherein no Essoin, Protection or Wager of Law shall be allowed, or any more than one Imparance; and that no such Bill, Plaint, Suit or Information, nor any Proceedings thereupon, shall be removed before Judgment, or stayed by any Writ or Certiorari, Habeas Corpus or other Writ whatsoever.

To what
Clerks, &c. the
Act doth
not extend.

XXVI. Provided nevertheless, and it is hereby further enacted by the Authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to the Examination, Swearing, Admission or Inrollment of the six Clerks of the Court of Chancery, or the sworn Clerks in their Office, or the waiting Clerks belonging to the said six Clerks, or the Cursitors of the said Court, or of the Clerks of the Petty

(12.) This Provision only applies when the Bill is reduced on Account of the Charges being objectionable, not where the Foundation of the Demand as to a particular Branch of Business is denied and disallowed; *White v. Miller*, 2 H. B. 357.

Bag Office, or of the Clerks of the King's Coroner and Attorney in the Court of King's Bench, or of the Filazers of the same Court, or of the Filazers of the Court of Common Pleas at *Westminster*, or of the Attornies of the Court of the Dutchy Chamber of *Lancaster*, or of the Attornies of the Court of Exchequer at *Chester*, or of the Attornies of the Courts of the Lord Mayor and Sheriffs of *London* respectively for the Time being; but that the said Clerks, Filazers and Attornies respectively, shall and may be examined, sworn, admitted, inrolled and practise in their respective Courts and Offices aforesaid, in like Manner as they might have been or done before the making of this Act.

No. 14.
2 George II.
c. 23.

XXVII. Provided also, and it is hereby further declared and enacted by the Authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to the Examination, Swearing, Admission or Inrollment of the Attornies or Clerks of the Offices of the King's Remembrancer, Treasurer's Remembrancer, Pipe, or Office of Pleas in the Court of Exchequer at *Westminster* for the Time being; but that the said Attornies and Clerks of the said respective Offices shall and may be approved, sworn, admitted and practise in the said Court of Exchequer, or may practise in any other of the Courts of Record before mentioned, in the Name and with the Consent of some sworn Attorney of such Court, such Consent to be in Writing, and signed by such Attorney as aforesaid, in like Manner as they have usually been, and might have done, before the making of this Act, any Thing herein contained to the contrary in any wise notwithstanding; and that it shall and may be lawful, from and after the said first Day of *December* one thousand seven hundred and thirty, for any Person who shall be sworn, admitted and inrolled an Attorney or Solicitor in any of the several Courts before mentioned, according to the Direction of this Act, to practise and solicit in the said respective Offices, in the same Manner as heretofore has been done; any Thing herein before contained, or any Law or Statute to the contrary notwithstanding.

The Attornies and Clerks in the Exchequer, herein mentioned, may act as heretofore,

as also the Solicitors of the Treasury, &c.

XXVIII. Provided also, That this Act or any Thing herein contained shall not extend or be construed to extend to the Examination, Swearing, Admission or Inrollment of Persons to be Solicitors of the Treasury, Customs, Excise, Post-Office, Salt or Stamp Duties, or of any other Branches of his Majesty's Revenue for the Time being, or of the Solicitor of the City of *London* for the Time being, or of the Assistant to the Council for the Affairs of the Admiralty and Navy; but that such Solicitors and Assistant may be examined, sworn, admitted and practise, in their respective Offices only, as they might have done before the making of this Act.

Continuation of this Act.

XXIX. Provided always, and be it enacted by the Authority aforesaid, That this Act shall continue in Force from the said first Day of *June* one thousand seven hundred and twenty-nine for the Term of nine Years, and from thence unto the

- No. 14. End of the then next Session of Parliament, and no longer.
 2 George II. c. 23. [Continued by 12 Geo. 2. c. 13: and amended and continued by 22 Geo. 2. c. 46. until 1 June 1757. And to the End of the next Session.] *Made perpetual by 30 Geo. 2. c. 19. sect. 75.*

No. 15.

- D. 5 George II. c. 18.—An Act for the further Qualification of Justices of the Peace.

No. 15.
 5 George II.
 c. 18.

Attornies, So-
 licitors, and
 Proctors inca-
 pacitated.

II. **A**ND be it further enacted by the Authority aforesaid, That no Attorney, Solicitor or Proctor in any Court whatsoever shall, from and after the said twenty-fifth Day of *March* one thousand seven hundred and thirty-three, be capable to continue or be a Justice of the Peace within any County for that Part of *Great Britain* called *England*, or the Principality of *Wales*, during such Time as he shall continue in the Business and Practice of an Attorney, Solicitor or Proctor.

No. 16.

- 6 George II. c. 27.—An Act to explain and amend an Act made in the second Year of his present Majesty's Reign, intituled, "An Act for the better Regulation of Attornies and Solicitors."

No. 16.
 6 George II.
 c. 27.

2 Geo. 2. c. 23

WHEREAS by an Act made in the second Year of his present Majesty's Reign, intituled, "An Act for the better Regulation of Attornies and Solicitors," it was enacted: That from and after the first Day of *December* one thousand seven hundred and thirty, no Person, who should not before the said first Day of *December* have been sworn, admitted and inrolled, pursuant to the Directions of the said Act, should be permitted to Act as an Attorney, or to sue out any Writ or Process, or to commence, carry on or defend any Action or Actions or any Proceedings, either before or after Judgment obtained, in the Name or Names of any other Person or Persons, in any of the Courts of Law in the said Act mentioned, unless such Person should have been bound by Contract in Writing to serve as a Clerk, for and during the Space of five Years, to an Attorney duly and legally sworn and admitted, as in the said Act is directed, in some or one of the Courts therein mentioned, and that such Person, for and during the said Term of five Years, should have continued in such Service, and also unless such Person, after the Expiration of the said Term of five Years, should be examined, sworn, admitted and inrolled in the same Manner as the Person who should be admitted Attornies of the said Courts are therein required to be examined, sworn, admitted and inrolled: Now for the Relief of Persons who have served for and during the Space of five Years, as Clerks to Attornies or Solicitors in any of the Courts of

Law or Equity in the said Act mentioned, and have not been bound by Contracts in Writing, and who were by Sickness prevented from being sworn, admitted, and inrolled Attornies, pursuant to the Directions of the said Act, and for the Relief of Persons who have served as Clerks to such Attornies or Solicitors for and during the Space of five Years and have been bound by Contracts in Writing, but have not served for and during the Space of five Years, since the Dates of such Contracts, or who, being Sons of such Attornies or Solicitors, have served as Clerks to their respective Fathers for and during the Space of five Years, but have not been bound by Contracts in Writing; Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every such Person being first examined and approved, as by the said Act is directed, shall and may, on or before the last Day of *Michellmas* Term which shall be in the Year of our Lord one thousand seven hundred and thirty-three, be qualified to be sworn, admitted and inrolled an Attorney in the several and respective Courts in the said Act mentioned; any Thing in the said Act to the contrary notwithstanding.

II. And be it further enacted by the Authority aforesaid, That any Person who hath been by virtue of the said Act admitted an Attorney in any of his Majesty's Courts of Record at *Westminster*, shall and may be capable of being admitted to practise as an Attorney in any inferior Court of Record, provided such Person be in all other Respects capable and qualified to be admitted an Attorney according to the Usage and Custom of such inferior Court; any Thing in the said Act contained to the contrary in any wise notwithstanding.

No. 16.
6 George II.
c. 27.

Relief for Persons not inrolled Attornies, &c. pursuant to the said Act.

Persons admitted Attornies in any Court at *Westminster*, may be admitted in inferior Courts, if other wise duly qualified.

No. 17.

12 George II. c. 13. — An Act for continuing the Act made in the eighth Year of the Reign of her late Majesty Queen *Anne*, to regulate the Price and Assize of Bread; and for continuing, explaining and amending the Act made in the second Year of the Reign of his present Majesty, for the better Regulation of Attornies and Solicitors.

13.

III. AND be it further enacted by the Authority aforesaid, That an Act made in the second Year of the Reign of his present Majesty, intituled, "An Act for the better Regulation of Attornies and Solicitors," which was to continue in Force from the first Day of *June* one thousand seven hundred and twenty-nine, for the Space of nine Years, and from thence to the End of the then next Sessions of Parliament,

No. 17.
12 George II.
c. 13.

2 Geo. 2. c. 23.
Continued and amended by 22 Geo. 2. c. 46. as made perp. val by 30 Geo. 2. c. 19. 975.

No. 17. and is near expiring, shall be and is hereby further continued
 George II. on the Expiration thereof until the said twenty-fourth Day
 c. 13. of June one thousand seven hundred and forty-eight, and from
 thence to the End of the then next Sessions of Parliament.

Not indorsing
 Attorney's
 Name on War-
 rants upon
 Writs, not to
 vitiate the same.

Officers to in-
 dorse Attornies
 Names upon
 Writs.

IV. And be it further enacted by the Authority aforesaid, That from and after the twenty-fourth Day of June, in the Year of our Lord one thousand seven hundred and thirty-nine, the not subscribing or indorsing the Name of the Attorney's Clerk in Court, or Solicitor, on any Warrant that shall be made out upon any Writ, Process, or Execution, shall not vitiate the same; but such Writ, Process, and Execution, and all Proceedings thereon, shall be as valid and effectual, notwithstanding such Omission, as if the said recited Act for regulating Attornies and Solicitors had not been made; provided the Writ whereon such Warrant is made out be regularly subscribed or indorsed according to the said Act; and every Sheriff or Sheriffs, or other Officer, who shall make out any Warrant upon any Writ, Process, or Execution, and shall not subscribe or indorse the Name of the Attorney, Clerk in Court or Solicitor, who sued out the same, shall forfeit the Sum of five Pounds, to be assessed as a Fine upon such Sheriff or Sheriffs, or other Officer, by the Court out of which such Writ, Process, or Execution shall issue; one Moiety thereof to be paid to his Majesty, his Heirs and Successors, and the other Moiety to the Person or Persons aggrieved by such Omission.

Attornies may
 use Abbrevia-
 tions in their
 Bills.

V. And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of June one thousand seven hundred and thirty-nine, it shall and may be lawful to and for every Attorney, Clerk in Court and Solicitor, to write his Bill of Fees, Charges, and Disbursements, with such Abbreviations as are now commonly used in the English Language; any Thing in any former Law to the contrary notwithstanding.

2 Geo. 2. c. 23.
 Not to extend
 to any Bill of
 Fees between
 one Solicitor
 and another.

VI. And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of June one thousand seven hundred and thirty-nine, the said Act of the second Year of his present Majesty, for the better Regulation of Attornies and Solicitors, or any Cause, Matter, or Thing therein contained, shall not extend to any Bill of Fees, Charges, and Disbursements, that are now, or shall hereafter become due from any Attorney or Solicitor (V.) to any other Attorney or Solicitor, or Clerk in Court; but that every such Attorney, Solicitor, or Clerk in Court, may use such Remedies for the Recovery of his Fees, Charges, and Disbursements against such other Attorney or Solicitor, as he might have done before the making of the said Act.

Penalty on
 persons unquali-
 fied acting in
 County Courts.

VII. And be it further enacted, That in case any Person shall, from and after the said twenty-fourth Day of June one thousand seven hundred and thirty-nine, commence or defend

(1.) This Provision applies although the Business was done before the Defendant became an Attorney; *Ford v. Maxwell*, 2 H. B. 589.

any Action, or sue out any Writ, Process, or Summons, or carry on any Proceedings in the Court commonly called *The County Court*, holden in any County in that Part of *Great Britain* called *England*, who is not or shall not then be legally admitted an Attorney or Solicitor, according to the said Act made in the second Year of the Reign of his present Majesty, that such Person shall for every such Offence forfeit the Sum of twenty Pounds, to be recovered with Costs by any other Person who shall sue for the same, within twelve Months next after such Offence shall be committed; in any of his Majesty's Courts of Record.

No. 17.
12 George II.
c. 13.

VIII. And be it enacted by the Authority aforesaid, That any Person being one of the People called *Quakers* who may have served, or shall hereafter serve, a Clerkship with an Attorney or Solicitor, and shall be qualified as by the said Act before is required, shall upon taking his solemn Affirmation instead of the Oaths thereby directed to be taken, before such Judges and others who are hereby authorized and required to administer the said Affirmation, be admitted and inrolled as an Attorney or Solicitor, as if he had taken the said Oaths; any Thing in the said Act to the contrary notwithstanding.

Quakers to
be inrolled upon
their Affirma-
tion.

IX. And be it further enacted by the Authority aforesaid, That from and after the twenty fourth Day of June one thousand seven hundred and thirty-nine, no Attorney or Solicitor, who shall be a Prisoner in any Gaol or Prison, or within the Limits, Rules, or Liberties of any Gaol or Prison, shall during his Confinement in any Gaol or Prison, or within the Limits, Rules, or Liberties of any Gaol or Prison, in his own Name, or in the Name of any other Attorney or Solicitor, sue out any Writ or Process, or commence or prosecute any Action or Suit in any Courts of Law or Equity; and that all Proceedings in such Actions or Suits shall be void and of none Effect; and such Attorney or Solicitor so commencing or prosecuting any Action or Suit as aforesaid, shall be struck off the Roll, and incapacitated from acting as an Attorney or Solicitor for the future; and any Attorney or Solicitor permitting or empowering any such Attorney or Solicitor as aforesaid to commence or prosecute any Action or Suit in his Name, shall be struck off the Roll, and incapacitated from acting as an Attorney or Solicitor for the future.

No Attornies,
&c. to com-
mence Suits, if
Prisoners.

Penalty.

X. Provided nevertheless, and it is hereby further enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to prevent any Attorney or Solicitor so confined as aforesaid, from carrying on or transacting any Suit or Suits commenced before the Confinement of such Attorney or Solicitor as aforesaid; any Thing in this Act contained to the contrary notwithstanding.

Proviso.

No. 18.

- B.** 22 George II. c. 46. — An Act to continue several Laws for preventing Exactions of the Occupiers of Locks and Wears upon the River *Thames* Westward, and for ascertaining the Rates of Water Carriage upon the said River; and for continuing, explaining, and amending the several Laws for the better Regulations of Attornies and Solicitors; and for regulating the Price and Assize of Bread; and for preventing the Spreading of the Distemper amongst the horned Cattle; and also for making further Regulations with respect to Attornies and Solicitors; and for further preventing the Spreading of the Distemper amongst the horned Cattle; and for the more frequent Return of Writs in the Counties Palatine of *Chester* and *Linchester*; and for ascertaining the Method of levying Writs of Execution against the Inhabitants of Hundreds; and for allowing *Quakers* to make Affirmation in Cases where an Oath is or shall be required.

* No. 18.
22 George II.
c. 46.

2 Geo. 2. c. 23.
Made perpetual
by 30 Geo. 2.
c. 19. sec. 25.

II. **AND** be it further enacted by the Authority aforesaid, That an Act made in the second Year of the Reign of his present Majesty, intituled, "An Act for the better Regulation of Attornies and Solicitors," which was to be in Force from the first Day of *June* one thousand seven hundred and twenty-nine, for the Term of nine Years, and from thence to the End of the then next Session of Parliament; and which by an Act made in the twelfth Year of his present Majesty, for continuing several Laws therein mentioned, was explained and amended, and further continued until the twenty-fourth Day of *June* one thousand seven hundred and forty-eight, and from thence to the End of the then next Session of Parliament, shall be, and the same is hereby, together with the Alterations and Amendments made by the said Act of the twelfth Year of his present Majesty, and those herein after mentioned, further continued from the Expiration thereof until the twenty-fourth Day of *June*, which shall be in the Year of our Lord one thousand seven hundred and fifty-seven, and from thence to the End of the then next Session of Parliament.

Persons bound
to serve as
Clerks to At-
tornies, to cause
Affidavit to be
made within
three Months
of the Execu-
tion of such
Contracts, &c.

III. And for the better preventing unqualified Persons from being admitted Attornies and Solicitors, and for rendering the said Act more effectual for the Purposes thereby intended; Be it enacted by the Authority aforesaid, That every Person who shall, from and after the first Day of *July* one thousand seven hundred and forty-nine, be bound by Contract in Writing to serve as a Clerk to any Attorney or Solicitor, as by the said Act is directed; shall, within three Months next after the Date of every such Contract, cause an Affidavit to be made and duly sworn of the actual Execution of every such

Contract, by every such Attorney or Solicitor, and the Person so to be bound to serve as a Clerk as aforesaid; and in every such Affidavit shall be specified the Names of every such Attorney and Solicitor, and of every such Person so bound, and their Places of Abode respectively, together with the Day of the Date of such Contract; and every such Affidavit shall be filed within the Time aforesaid, in the Court where the Attorney or Solicitor to whom every such Person respectively shall be bound as aforesaid, hath been inrolled as an Attorney or Solicitor, with the respective Officer or Officers, or his or their respective Deputy or Deputies, in the respective Courts herein after mentioned, who shall make and sign a Memorandum or Mark of the Day of filing every such Affidavit at the Back or at the Bottom thereof.

No. 18.
22 George II.
c. 46.

Affidavits to be filed.

IV. And be it further enacted, That no Person who shall, after the said first Day of July, become bound as aforesaid, shall be admitted or inrolled an Attorney or Solicitor in any Court in the said Act mentioned, before such Affidavit, so marked by the proper Officer as aforesaid, shall be produced and openly read in such Court, where such Person shall be admitted and inrolled an Attorney or Solicitor.

None to be admitted before such Affidavit be produced.

V. And it is hereby enacted and declared, That the several Persons following shall be deemed and taken to be the proper Officers for filing such Affidavits in the respective Courts herein after mentioned (that is to say) in the High Court of Chancery, the senior Clerk of the Petty Bag Office, or his Deputy; in the Court of King's Bench, the Chief Clerk of that Court, or his Deputy; in the Court of Common Pleas, the Clerk of the Warrants of that Court, or his Deputy; in the Court of Exchequer, the King's Remembrancer of that Court, or his Deputy; in the Court of the Duchy Chamber of Lancaster at Westminster, the Chief Clerk of that Court, or his Deputy; and in the several Counties Palatine of Chester, Lancaster, and Durham, the respective Prothonotaries of the said Counties Palatine, and their respective Deputies; and in the several Courts of the Great Sessions of Wales, the respective Prothonotaries of the said Courts, and their respective Deputies.

Officers who are to file such Affidavits.

VI. And be it further enacted, That every such Officer or Officers, or their respective Deputy or Deputies, filing such Affidavit as aforesaid, shall keep a Book, wherein shall be entered the Substance of such Affidavit, specifying the Names and Places of Abode of every such Attorney or Solicitor, and Clerk or Person bound as aforesaid, and of the Person making such Affidavit, with the Date of the Article or Contract in such Affidavit to be mentioned, and the Days of swearing and filing every such Affidavit respectively; and every such Officer or Officers, or his or their Deputy or Deputies, shall be at Liberty to take, at the Time of filing every such Affidavit, the Sum of two Shillings and six Pence, and no more, as a Recompence for his Trouble in filing such Affidavits, and preparing and keeping such Books as aforesaid, and which said Books shall

Books to be kept for entering the Names and Places of Abode of every such Attorney and Clerk, &c.

No. 19. and may be searched in Office Hours, by any Person or Persons whatsoever, without Fee or Reward.
22 George II. c. 46.

No Attorney to take a Clerk after discontinuing Business.

VII. And be it further enacted, That from and after the said first Day of *July*, no Attorney or Solicitor shall take, have, or retain any Clerk, who shall become bound by Contract in Writing as aforesaid, after such Attorney or Solicitor shall have discontinued or left off, or during such Time as he shall not actually practise as, or carry on the Business of an Attorney or Solicitor.

Clerks to be employed during their Contract.

VIII. And be it further enacted, That every Person who shall, from and after the said first Day of *July*, become bound, by Contract in Writing, to serve any Attorney or Solicitor, as by the said Act is directed, shall, during the whole Time and Term of Service, to be specified in such Contract, continue and be actually employed by such Attorney or Solicitor, or his or their Agent or Agents, in the proper Business, Practice or Employment of an Attorney or Solicitor.

Affidavit of the Execution of second Contracts by such Clerks, the Service of five Years to be deemed effectual.

IX. Provided always, and it is hereby enacted, If any such Attorney or Solicitor, to or with whom any such Person shall be so bound, shall happen to die before the Expiration of such Term or shall discontinue or leave off such his Practice as aforesaid, or if such Contract shall by mutual Consent of the Parties be cancelled, or in case such Clerk shall be legally discharged by any Rule or Order of the Court, wherein such Attorney or Solicitor shall practise, before the Expiration of such Term, and such Clerk shall in any of the said Cases be bound by another Contract, or other Contracts, in Writing to serve, and shall accordingly serve in Manner herein before mentioned, as Clerk to any other such practising Attorney or Attornies, Solicitor or Solicitors as aforesaid respectively, during the Residue of the said Term of five Years; then such Service shall be deemed and taken to be as good, effectual, and available, as if such Clerk had continued to serve as a Clerk for the said Term, to the same Person to whom he was originally bound, so as an Affidavit be duly made and filed of the Execution of such second or other Contract or Contracts, within the Time, and in like Manner, as is before directed concerning such original Contract.

Clerks, before admitted, to make Affidavit of having served five Years.

X. And be it further enacted, That every Person who, from and after the said first Day of *July*, shall become bound as a Clerk as aforesaid, shall, before he be admitted an Attorney or Solicitor according to the said Act, cause an Affidavit of himself, or such Attorney or Solicitor, to whom he was bound as aforesaid, to be duly made and filed with the proper Officer herein before for that Purpose appointed, that he hath actually and really served and been employed by such practising Attorney or Attornies, Solicitor or Solicitors, to whom he was bound as aforesaid, or his or their Agent or Agents, during the said whole Term of five Years, according to the true Intent and Meaning of this Act.

XI. And whereas divers Persons who are not examined, sworn, or admitted to act as Attornies or Solicitors in any

‘ Court of Law or Equity, do, in Conjunction with, or by the Assistance or Connivance of certain sworn Attornies and Solicitors, and by various subtle Contrivances, intrude themselves into, and act and practise in the Office and Business of Attornies and Solicitors, to the great Prejudice and Loss of many of his Majesty’s Subjects, and the Scandal of the Profession of the Law;’ Be it therefore enacted, That from and after the twenty-ninth Day of September, which shall be in the Year of our Lord one thousand seven hundred and forty-nine, if any sworn Attorney or Solicitor shall act as Agent for any Person or Persons, not duly qualified to act as an Attorney or Solicitor as aforesaid, or permit or suffer his Name to be any ways made use of upon the Account, or for the Profit of any unqualified Person or Persons, or send any Process to such unqualified Person or Persons, thereby to enable him or them to appear, act, or practise in any Respect as an Attorney or Solicitor, knowing him not to be duly qualified as aforesaid, and Complaint shall be made thereof in a summary Way to the Court from whence any such Process did issue, and Proof made thereof, upon Oath, to the Satisfaction of the Court, that such sworn Attorney or Solicitor hath offended therein as aforesaid; then, and in such Case, every such Attorney or Solicitor so offending shall be struck off the Roll, and for ever after disabled from practising as an Attorney or Solicitor; and in that Case, and upon such Complaint and Proof made as aforesaid, it shall and may be lawful to and for the said Court to commit such unqualified Person, so acting or practising as aforesaid, to the Prison of the said Court, for any Time not exceeding one Year.

No. 18.
22 George II.
c. 46.

Sworn Attornies acting as Agents for Persons not qualified, &c.

to be struck off the Roll.

and be committed.

‘ XII. And whereas frequent Delays, Inconveniences, and unnecessary Expences arise and happen, as well to Parties as private Persons, by the Mismanagement and Unskillfulness of Persons employed as Solicitors or Agents at the Sessions held for the several Counties, Ridings, Divisions, Cities, Towns Corporate, and other Places of this Kingdom, who having never been regularly bred to the Law, and being ignorant of the Forms and Operations thereof, Offenders against the Laws of the Land have frequently escaped with Impunity:’ For remedying therefore of these Inconveniences, Be it enacted by the Authority aforesaid, That from and after the twenty-ninth Day of September, which shall be in the Year of our Lord one thousand seven hundred and forty-nine, no Person whatsoever shall act as a Solicitor, Attorney, or Agent, or sue out any Process, at any General or Quarter Sessions of the Peace for any County, Riding, Division, City, Town Corporate, or other Place within this Kingdom, either with respect to Matters of a Criminal or Civil Nature, unless such Person shall have been heretofore admitted an Attorney of one of his Majesty’s Courts of Record at Westminster, and duly inrolled pursuant to an Act made in the second Year of his present Majesty’s Reign, intituled, “ An Act for the better Regulation of Attornies and Solicitors,” or unless such Person shall hereafter be admitted an Attorney, and inrolled as afore-

None to act as Attornies who were not admitted according to 2 Geo. 2. c. 23.

No. 18.
22 George II.
c. 46.

Penalty 50l.
with treble
Costs.

Attornies
suffering Per-
sons not admit-
ted to use their
Names, to for-
feit 50l.

Persons ex-
empted.

No Clerk of the
Peace, Under
Sheriff, &c. to
act as Attornies
&c. at Quarter-
Sessions for the
County, &c.

Penalty 50l.

said by virtue of this Act, or such other Law as shall be then in being, and unless such Person shall continue so entered upon the Roll, at the Time of such his acting in the Capacity aforesaid; but all and every Person or Persons respectively, who shall so act, not being admitted and inrolled as aforesaid, shall be subject and liable to a Penalty of fifty Pounds; to be recovered by Action of Debt, Bill, Plaint, or Information, in any of the Courts of Record at *Westminster*, by any Person or Persons who shall sue for the same, within twelve Months after the Offence committed, with Treble Costs of Suit; and if any Attorney or Attornies sh
Persons whatsoever, not
said, to make use of
in the Courts of Ge
Attorney or Attorn
a like Penalty of fifty
said.

XIII. Provided always, That nothing herein contained shall extend, or be construed to extend, to deprive the Attornies of the Dutchy of *Lancaster*, or of the Courts of Great Sessions in *Wales*, or of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, from acting within their respective Jurisdctions.

XIV. And, to the End that Justice may be impartially administered in the several General or Quarter-Sessions of this Kingdom, Be it further enacted by the Authority aforesaid, That no Clerk of the Peace, or his Deputy, nor any Under-Sheriff, or his Deputy, shall, from and after the said twentieth Day of September, act as a Solicitor, Attorney, or Agent, to sue out any Process, at any General or Quarter Sessions of the Peace to be held for such County, Riding, Division, City, Town, Corporate, or other Place within this Kingdom, where he shall execute the Office of Clerk of the Peace, or Deputy Clerk of the Peace, Under-Sheriff, or Deputy, on any Pretence whatsoever; but if any Clerk of the Peace, or his Deputy, or any Under-Sheriff, or his Deputy, shall presume to act as a Solicitor, Attorney, or Agent as aforesaid, such Clerk of the Peace, or his Deputy, Under-Sheriff, or his Deputy respectively, shall be subject and liable to a like Penalty of fifty Pounds, to be recovered in Manner aforesaid.

XV. And whereas several Persons have been bound by Articles in Writing to Attornies of one of his Majesty's Courts at *Westminster*, to serve them as their Clerks, for the Term of five Years, which Attornies have died before the Expiration of the said five Years, and after their Deaths such Persons so bound have served the Remainder of the said Term with some other Attornies of the said Courts, but have neglected to enter into Articles with the said other Attornies for the Remainder of the Term of five Years, and therefore Doubts have arisen, whether such Persons could be admitted Attornies of any of his Majesty's Courts by reason that such Service was not strictly in pursuance of the Direction of the

'before-mentioned Act;' Be it therefore enacted and declared by the Authority aforesaid, That all such Persons who shall have been so bound as aforesaid for the Term of five Years to Attornies of any of his Majesty's Courts at *Westminster*, which said Attornies shall have died before the Determination of the said Term, if such Persons shall afterwards, and before the twenty-fifth Day of *March* one thousand seven hundred and forty-nine, have served the Residue of the said Term of five Years, with some other Attornies of one of his Majesty's said Courts, though without entering into any new Articles, such Persons having so served during the said Term of five Years, shall and may be admitted Attornies in any of his Majesty's Courts at *Westminster*; any Thing in the said Act, or in this present Act, contained to the contrary in any wise notwithstanding.

XVI. And be it further enacted by the Authority aforesaid, That any Person who shall have been admitted a sworn Clerk in the Office of the six Clerks of the Court of *Chancery*, or shall have been bound by Contract in Writing, to serve as a Clerk for and during the Space of five Years, to a sworn Clerk in the said Office, and for and during the said Term of five Years shall have continued in such Service, and shall have continued in such Service for the Space of three Years, or more, and shall have been admitted a Waiting Clerk, or acted as such during the Residue of the said Term of five Years, may be examined, sworn, and admitted and inrolled as a Solicitor, in the same Manner as Solicitors in Courts of Equity are by the said Act required to be examined, sworn, admitted, and inrolled; any Thing in the said Act to the contrary notwithstanding.

XVII. Provided also, and it is hereby further enacted, That if any sworn Clerk in the said six Clerks' Office, with and to whom any Person hath been, or shall be bound by Contract in Writing as aforesaid, to serve as a Clerk for the Term of five Years, shall happen to die before the Expiration of the said Term of five Years, or if such Contract shall, by mutual Consent of the Parties, be vacated, or in Case such Clerk be legally discharged by any Rule or Order of the Court of *Chancery*, before the Expiration of the said Term of five Years; then, and in any of the said Cases, if such Clerk shall by Contract in Writing be obliged to serve, and shall accordingly serve as a Clerk to any other sworn Clerk in the said six Clerks' Office, or to any Solicitor who shall be sworn, admitted, and inrolled, pursuant to the said Act of the second Year of his present Majesty, during the Residue of the said Term of five Years, then such Service shall be deemed and taken to be as good and effectual as if such Clerk had continued to serve as a Clerk for the Term of five Years to the same Person to whom he was originally bound by Contract in Writing as aforesaid.

XVIII. Provided always, and it is hereby further enacted by the Authority aforesaid, That no sworn Clerk in the said

No. 18.
22 George II.
c. 46.

Clerks, whose Masters have died, serving the Residue of their Times with others without fresh Contracts, to be admitted.

Persons admitted sworn Clerks in the Office of the six Clerks, or bound for five Years, &c.

may be admitted Solicitors.

Clerks, whose Masters have died, &c. entering into fresh Contracts, and serving the Residue of their Time, same to be effectual.

No sworn Clerk to have more than two Clerks.

No. 18. six Clerks' Office shall have more than two Clerks at one and
 22 George II. the same Time, including the Clerk who shall be entered on
 c. 46. the Roll kept by the Master of the Rolls, or his Secretary, for
 that Purpose.

Persons ex-
 empted.

XIX. Provided also, and it is hereby further declared and enacted by the Authority aforesaid. That nothing in this Act contained shall extend, or be construed to extend, to the Taking or Binding, Examination, Swearing, Admission, or Inrolment of the Attornies, or Clerks of the Offices of the King's Remembrancer, Treasurer's Remembrancer, Pipe, or Office of Pleas, in the Court of *Exchequer*, at *Westminster*, for the Time being, but that the said Attornies and Clerks of the said respective Offices shall and may be taken, bound, approved, sworn, admitted, and practise in the said Court of *Exchequer*, in like Manner as they usually have been, and might have done before the making of this Act, and may practise in any other of the Courts of Record before-mentioned, in the Name, and with the Consent of some sworn Attorney of such Court, such Consent being in Writing, and signed by such Attorney as aforesaid, in the Manner as they have usually been and might have done before the making of this Act; any Thing herein contained to the contrary notwithstanding.]

No. 19.

23 George II. c. 26. — An Act to continue several Laws for the better regulating of Pilots, for the conducting of Ships and Vessels from *Dover*, *Deal*, and *Isle of Thanet*, up the Rivers of *Thames* and *Medway*; and for permitting Rum or Spirits of the *British Sugar Plantations* to be landed before the Duties of Excise are paid thereon; and to continue and amend an Act for preventing Frauds in the Admeasurement of Coals within the City and Liberty of *Westminster*, and several Parishes near thereunto; and to continue several Laws for preventing Exactions of Occupiers of Locks and Weirs upon the River *Thames* Westward; and for ascertaining the Rates of Water Carriage upon the said River; and for the better Regulation and Government of Seamen in the Merchants Service; and also to amend so much of an Act made in the first Year of the Reign of King *George the First*, as relates to the better Preservation of Salmon in the River *Ribble*; and to regulate Fees in Trials at Assizes, and *Nisi Prius*, upon Records issuing out of the Office of Pleas of the Court of *Exchequer*; and for the apprehending of Persons in any County or Place, upon Warrants granted by Justices of the

Peace in any other County or Place; and to repeal so much of an Act made in the twelfth Year of the Reign of King *Charles* the Second, as relates to the Time during which the Office of Excise is to be kept open each Day, and to appoint for how long Time the same shall be kept open upon each Day for the future; and to prevent the stealing or destroying of Turnips; and to amend an Act made in the second Year of his present Majesty, for better Regulation of Attornies and Solicitors.

*XV. **A**ND whereas by an Act of Parliament made and passed in the second Year of the Reign of his present Majesty, intituled, "An Act for the better Regulation of Attornies and Solicitors," it was enacted, That from and after the first Day of *December* one thousand seven hundred and thirty, any Person who should be sworn, admitted, and inrolled to be an Attorney in any of his Majesty's Courts of *King's Bench, Common Pleas, Exchequer, Counties Palatine of Chester, Lancaster and Durham*, and Great Sessions in *Wales*, as is therein directed, might be sworn, admitted, and inrolled to be a Solicitor in all or any of the Courts of Equity, in the said Act specified, without any Fee for the Oath, or any Stamp to be impressed on the Parchment, whereon such Admission should be written, if the Master of the Rolls, two Masters of the *Chancery*, the Barons of the Court of *Exchequer*, the Chancellor of the *Dutchy of Lancaster*, and the Judges of the other Courts of Equity, in the said Act mentioned for the Time being, or any of them respectively, should, upon examining such Attorney, touching his Fitness and Capacity to act as a Solicitor in Courts of Equity, be satisfied that such Attorney is duly qualified to be so admitted; but there being no Provision made in the said Part recited Act, for admitting Persons who had been, or shall be sworn, admitted, and inrolled Solicitors in any of the Courts of Equity in the said Act mentioned) Attornies of any of his Majesty's Courts of Law therein also mentioned, although such Solicitor should be duly qualified in all other Respects; Wherefore, and to supply such Omission, Be it enacted by the Authority aforesaid, That from and after the second Day of *May* one thousand seven hundred and fifty, any Person who hath been already, or who at any Time or Times hereafter shall be sworn, admitted, and inrolled a Solicitor in any of his Majesty's Courts of Equity at *Westminster*, in such Manner as by the said Act is directed, may be sworn, admitted, and inrolled to be an Attorney of his Majesty's Court of *King's Bench* or *Common Pleas* at *Westminster*, without any Fee for the Oath, or any Stamp to be impressed on the Parchment whereon such Admission shall be written (his having been sworn, admitted, and inrolled a Solicitor in any of the Courts of Equity afore-mentioned notwithstanding) if the Judges of

No. 19.
23 George II.
c. 26.

2 Geo. 2. c. 23.
20.
Made perpetual
by 30 Geo. 2.
c. 19. sec. 75.

Solicitors in the
Courts of Equity
may be admitted
Attornies without
Fees.

- No. 19. the said Courts of *King's Bench* or *Common Pleas* for the Time
23 George II. being, or any of them respectively, shall, upon examining
c. 26. such Solicitor, touching his Fitness and Capacity to act as an
Attorney in the said respective Courts, be satisfied that such
Solicitor is duly qualified to be sworn, admitted, and inrolled
an Attorney, pursuant to the said in Part recited Act, and
other the Laws now in Force concerning Attornies and Solicitors.

No. 20.

- 49 George III. c. 28.—An Act to enable the Clerks of
the King's Coroner and Attorney in the Court of
King's Bench to be admitted as Attornies. [30th.
March 1809.]

PART IV. CLASS III.

ORIGINAL WRIT—PROCESS—ARREST— IMPRISONMENT—BAIL—APPEAR- ANCE.*

* The Subjects included in this Class are so intimately connected in themselves, and are so essentially blended in several of the Statutes, that I have found it most convenient to place them together. The Statutes relating to Outlawry, Re Actions, and Proceedings against Persons having Privilege of Parliament, are not included, and are comprised in several Classes relating particularly to those respective Subjects. As many Statutes equally affect Imprisonment under Means Process and upon Execution, the whole Subject of Imprisonment under Civil Process is included in the present Class; although those Statutes which relate exclusively to Imprisonment under Execution would, in other Respects, be more regularly inserted in a subsequent Division.

No. 1.

52 Henry III. c. 23. (Marlebridge).—A Remedy against Accomptants. Fermors shall make no Waste.

Ex Rot. in Turr. Lond.

Provisum est etiam, quod si Ballivi, qui dominis suis compotum reddere tenentur, se subtraxerint, & terras & tenementa non habuerint, per que distringi possint; tunc per eorum corpora attachientur, ita quod Vicecomes, in cujus balliva inveniantur, eos venire faciat ad compotum suum reddend'.

Firmarii tempore firmarum suarum vastum vel exilium non faciant de boscis, domibus vel hominibus, nec de aliquibus ad tenementa que habent ad firmam spectantibus, nisi specialem inde habuerint concessio-

IT is provided also, That if Bailiffs, which ought to make account to their Lords, do withdraw themselves, and have no Lands nor Tenements whereby they may be distrained; then they shall be attached by their Bodies, so that the Sheriffs, in whose Baliwick they be found, shall cause them to come to make their Account.

II. Also Fermors, during their Terms, shall not make Waste, Sale,* nor Exile of House, Woods, and Men, nor of any Thing belonging to the Tenements that they

No. 1.
52 Henry III:
c. 23.

* Not in the
Original.

No. 1.
52 Henry III.
c. 23.

'have to ferm, without special
'Licence had by Writing of
'Covenant, making mention,
'that they may do it; which
'Thing if they do, and thereof
'be convict, they shall yield
'full Damage, and shall be
'punished by Amerciament
'grievously.'

Ex Rot. in Turr. Lond.

nem, sive convensionis men-
tionem, adeo quod hoc facere
possint. Et si fecerint, & su-
per hoc convincantur, dampna
plene refundant, & graviter
per misericordiam puniantur.

No. 2.

13 Edward I. stat. 1. c. 11. (Westminster the Second).—
The Master's Remedy against their Servants, and
other Accomptants.*

No. 2.
13 Edward I.
stat. 1. c. 11.

In what Cases
Auditors may
commit Ac-
comptants to
Prison.

CONCERNING Servants, Bai-
liffs, Chamberlains, and
all Manner of Receivers,
which are bound to yield Ac-
compt, it is agreed and or-
dained, That when the Mas-
ters of such Servants do
assign Auditors to take their
Accompt, and they be found
in Arrearages upon the Ac-
compt, all Things allowed
which ought to be allowed,
their Bodies shall be arrested,
and by the Testimony of the
Auditors of the same Ac-
compt, shall be sent or deli-
vered unto the next Gaol of
the King's in those Parts,
and shall be received of the
Sheriff or Gaoler, and im-
prisoned in Iron under safe
Custody, and shall remain
in the same Prison at their
own Cost, until they have
satisfied their Master fully of
the Arrearages. Neverthe-
less if any Person being so
committed to Prison, do com-
plain, that the Auditors of
his Accompt have grieved
him unjustly, charging him
with Receipts that he hath
not received, or not allowing
him Expences, or reasonable

he Accompt-
ant's Relief.

Ex Rot. in Turr. Lond.

DE servientibus ballivis ca-
merariis & quibuscum-
que receptoribus qui ad com-
potum reddendum tenentur
concorditer est statutum & or-
dinatum quod cum dominus
hujusmodi servientium dederit
eis auditores compoti & con-
tingat ipsos esse in arrearagiis
super compotum suum arres-
tentur corpora ipsorum & per
testimonium auditorum ejusdem
compoti mittantur & liberentur
proxime gaole domini Regis in
partibus illis & a vicecomite
seu custode ejusdem gaole reci-
plantur & mancipentur carceri
in ferris sub bona custodia &
in illa prisona remaneant de
suo proprio viventes quousque
dominis suis de arrearagiis ple-
narie satisfecerint. Attamen
si quis sic gaole liberatus con-
queratur quod auditores com-
poti ipsum injuste gravaverunt
onerando de receptis que non
recepit vel non allocando ex-
pensas aut liberationes rationa-
biles & inveniat amicos qui
eum mancipare voluerint ad
ducentum coram baronibus de
ecclesia liberetur eis & scire
faciat vicecomes in cujus pri-
sona fuerit domino quod sit co-

Ex Rot. in Turr. Lond.

ram Baronibus de Scaccario ad aliquem certum diem cum rotulis & tallis per quos compotum reddiderit & in presentia Baronum vel auditorum quos assignare voluerint recitetur compotus & fiat partibus iustitia ita quod si fuerit in arreariis committatur gaole de Fleet ut supradictum est. Et si diffugerint & gratis compotum reddere noluerint sicut alibi in aliis statutis continetur distringantur ad veniendum coram Justiciis ad compotum suum reddendum si habeant per quod distringi possint. Et si ad curiam venerint dentur auditores compoti coram quibus si fuerint in arreariis si statim arreagia solvere non possint committantur gaole custodiendi in forma predicta. Et si diffugerint & testatum fuerit per vicecomitem quod non sunt inventi exigantur de comitatu in comitatum quosque utlagentur & sint huiusmodi incarcerati irreplegiabiles. Et caveat sibi vicecomes vel custos ejusdem gaole si ve sit in libertate si ve non quod per communem brevem quod dicitur Replegiar vel alio modo sine assensu domini ipsum a prisona eire non permittat quod si fecerit & super hoc convincatur respondeat domino de dampno per huiusmodi servientem sibi illato secundum quod per patriam verificare poterit & habeat suum recuperare per breve de Debito. Et si custos gaole non habeat per quod iusticietur unde solvat respondeat superioribus qui custodiam huiusmodi gaole sibi commisit per idem breve.

Disbursements, and can find Friends that will undertake to bring him before the Barons of the Exchequer, he shall be delivered unto them; and the Sheriff (in whose Prison he is kept) shall give Knowledge unto his Master, that he appear before the Barons of the Exchequer at a certain Day, with the Rolls and Tallies by which he made his Accompt; and in the Presence of the Barons, or the Auditors that they shall assign him, the Accompt shall be rehearsed, and Justice shall be done to the Parties, so that if he be found in Arrearages, he shall be committed to the Fleet, as above is said. And if he flee, and will not give Accompt willingly, as is contained elsewhere in other Statutes, he shall be distrained to come before the Justices to make his Account, if he have whereof to be distrained. And when he cometh to the Court, Auditors shall be assigned to take his Accompt, before whom if he be found in Arrearages, and cannot pay the Arrearages forthwith, he shall be committed to the Gaol to be kept in Manner aforesaid. And if he flee, and it be returned to the Sheriff that he cannot be found, Exigents shall go against him from County to County, until he be outlawed, and such Prisoner shall not be repleviable. And let the Sheriff or Keeper of such Gaol take Heed, if it be within a Franchise, or without, that he do not suffer him to go out of Prison by the common Writ called

No. 2.

13 Edward 1.
stat. 1. c. 11.An Exigent
against an Ac-
comptant.Escape of an
Accomptant.

Ex Rot. in Turr. Lond.

No. 2.
13 Edward I.
stat. 1. c. 11.

‘*Replegiare*, or by other Means,
‘ without Assent of his Master;
‘ and if he do, and thereof be convicted, he shall
‘ be answerable to his Master
‘ of the Damages done to him
‘ by such his Servant, according
‘ as it may be found by the
‘ Country, and shall have his
‘ Recovery by Writ of Debt.
‘ And if the Keeper of the
‘ Gaol have not wherewith he
‘ may be justified, or not able
‘ to pay, his Superior that committed the Custody of the
‘ Gaol unto him, shall be
‘ answerable by the same
‘ Writ.’

No. 3.

13 Edward I. stat. 1. c. 24. (Westminster the Second.)—
A Writ of Nuisance of a House, &c. levied and
aliened to another. A *Quod permittat et Juris*
utrum for a Parson of a Church. In like Cases like
Writs be grantable.

No. 3.
13 Edward I.
stat. 1. c. 24.
A Writ of
Nuisance.

‘ **I**N Cases whereas a Writ
‘ is granted out of the
‘ Chancery for the Fact of
‘ another, the Plaintiffs from
‘ henceforth shall not depart
‘ from the King’s Court without
‘ Remedy, because the Land
‘ is transferred from one to
‘ another. And in the Register
‘ of the Chancery there
‘ is no special Writ found in
‘ this Case, as of a House, a
‘ Wall, a Market, but the
‘ Writ is granted against him
‘ that levied the Nuisance.
‘ And if the House, Wall, or
‘ such like be aliened to another,
‘ the Writ shall not be
‘ denied; but from henceforth,
‘ where in one Case a Writ is
‘ granted, in like Case, requiring
‘ like Remedy, the Writ
‘ shall be made as hath been
‘ used before:

IN casibus quibus conceditur
breve in Cancellaria de
facto alicujus decetero non recedant
querentes a curia Regis
sine remedio pro eo quod tenementum
transfertur de uno
in alium & in registro de Cancellaria
non est inventum ali-
quod breve in illo casu speciale
sicuti de domo muro mercato
conceditur breve super
eum qui levavit. Et si transferatur
domus murus & hiis
consimilis in aliam personam
breve denegatur set decetero
cum in uno casu conceditur
breve & in consimili casu simili
remedio indigente sicut prius
fit breve.

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Questus est nobis A. quod B. injuste, &c. levavit domum murum mercatum & alia que sunt ad nocumentum.

Si hujusmodi levata transferantur in aliam personam decetero fiat breve sic :

Questus est nobis A. quod B. & C. levaverunt, &c.

Eodem modo sicut persona alicujus ecclesie recuperare potest communiam pasture per breve Nove disseisine eodem modo decetero recuperet successor super disseisitorem vel ejus heredem per breve Quod permittat licet hujusmodi breve prius a Cancellaria non fuit concessum. Eodem modo sicut conceditur breve utrum aliquod tenementum sit libera elemosina alicujus ecclesie vel laicum feodum talis decetero fiat breve utrum sit libera elemosina talis ecclesie vel alterius ecclesie in casu quo libera elemosina unius ecclesie transfertur in possessionem alterius ecclesie. Et quotienscumque decetero evenerit in Cancellaria quod in uno casu reperitur breve & in consimili casu cadente sub eodem jure & simili indigente remedio concordent clerici de Cancellaria in brevifaciendo vel atterminent querentes in proximo parlamento & scribant casus in quibus concordare non possunt & referant eos ad proximum parlamentum & de consensu jurisperitorum fiat breve ne contingat decetero quod curia diu deficiat querentibus in justitiis perquirenda.

Questus est nobis A. quod B. injuste, &c. levavit domum, murum, mercatum, & alia que sunt ad nocumentum, &c.

And if such Things levied be aliened from one to another, the Writ shall be thus :
Questus est nobis A. quod B. & C. levaverunt, &c.

II. In like Manner as a Parson of a Church may recover Common of Pasture by Writ of *Novel disseisin*, likewise from henceforth his Successor shall have a *Quod permittat* against the Disseisor or his Heir, though a like Writ were never granted out of the Chancery before. And in like Manner as a Writ is granted to try whether Land be the free Alms of such a Church, or the Lay Fee of such a Man, even so from henceforth a Writ shall be made to try whether it be the free Alms of this Church, or of another Church, in Case where the free Alms of one Church is transferred to the Possession of another Church. And whensoever from henceforth it shall fortune in the Chancery, that in one Case a Writ is found, and in like Case falling under like Law, and requiring like Remedy, is found none, the Clerks of the Chancery shall agree in making the Writ, or adjourn the Plaintiffs until the next Parliament, and let the Cases be written in which they cannot agree, and let them refer themselves until the next Parliament, by Consent of Men learned in the Law, a Writ shall be made, lest it might happen after that the Court should long Time fail to minister Justice unto Complainants.

No. 3.
13 Edward I.
stat. 1. c. 24.

No. 4.

18 Edward I. stat. 1. c. 39. (Westminster the Second).—
The Manner to deliver Writs to the Sheriff to be
executed. The Sheriff returneth a Liberty where
none is. Returning of Issues. Resistance of Exe-
cution of Process.

No. 4.

13 Edward I.
stat. 1. c. 39.

How Writs
shall be deli-
vered to Sher-
iffs to be exe-
cuted.

FORASMUCH as Justices, to whose Office It belongeth to minister Justice to all that sue before them, are many Times disturbed in due Execution of their Office, for that Sheriffs do not return Writs original and judicial; and also for that they make false Returns unto the King's Writs; our Lord the King hath provided and ordained, That such as do fear the Malice of Sheriffs, shall deliver their Writs original and judicial in the open County, or in the Rere County where the Collection of the King's Money is; and may take of the Sheriff or Under-Sheriff, being present, a Bill, wherein the Names of the Demandants and Tenants mentioned in the Writ shall be contained; and at the Request of him that delivered the Writ, the Seal of the Sheriff or Under-Sheriff shall be put to the Bill for a Testimony, and Mention shall be made of the Day of the Deliverance of the Writ. And if the Sheriff or Under-Sheriff will not put his Seal to the Bill, the Witness of Knights and other credible Persons being in Presence shall be taken, that put their Seals to such Bill. And if the Sheriff will not return Writs delivered unto him, and Complaint thereof being made to the Justices, a Writ judicial shall go unto the Justices assigned

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QUIA Justitarii ad quorum officium spectat unicuique coram eis placitandi justitiam exhibere frequentius impediuntur quo minus officium suum debito modo exequi possent per hoc quod vicecomites brevia originalia & judicialia non returnant per hoc etiam quod ad brevia Regis falsum returnant responsum providit Dominus Rex & ordinavit quod illi qui timent maliciam vicecomitis liberent brevia sua originalia & judicialia in pleno comitatu vel in retro comitatu ubi fit collectio denariorum Domini Regis & capiatur biletum de vicecomite presente vel de subvicecomite in quo biletto contineantur nomina petent' et tenent' que nominantur in brevi & ad requisitionem illius qui breve liberabit apponatur sigillum vicecomitis vel subvicecomitis in testimonium & fiat mentio de die liberationis brevis. Et si vicecomes vel subvicecomes hujusmodi biletto sigilla sua apponere noluerint capiatur testimonium militum & aliorum fide dignorum qui presentes fuerint qui sigilla sua hujusmodi biletto apponant. Et si vicecomes brevia sibi non returnaverit & super hoc Justitiaris querimonia perveniat mandetur per breve de Judicio Justitiaris ad assisas capiendas assignatis quod inquirent per eos qui presentes fuerint quando breve vicecomiti liberatum fuit ei sciverint de illa liberatione & inquisitio

Ex Rot. in Turr. Lond.

returnetur. Et si compertum fuerit per inquisitionem quod breve fuit ei liberatum adjudicentur petenti vel querenti dampna habito respectu ad quantitatem & qualitatem actionis & ad periculum. quod ei evenire posset per dilationem quam patiebatur. Et per istam viam fiat remedium quando vicecomes respondet quod breve adeo tarde venit quod preceptum Regis exequi non potuit. Multoties etiam capiunt placita dilationem per hoc quod vicecomes respondet quod precipuerint ballivis alicujus libertatis qui nihil inde fecerunt & nominant libertates que nunquam returnum brevium habuerunt propter quod ordinavit Dominus Rex quod Thesaurarius de Scaccario haberet in rotulo omnes libertates in quibuscumque comitatibus que habent returnum brevium. Et si vicecomes respondeat quod returnum fecit ballivis alterius libertatis quam alicujus contente in predicto rotulo statim puniatur vicecomes tanquam exheredator Domini Regis et corone sue. Et si forte respondeat quod returnavit ballivis alicujus libertatis que veraciter returnum habet, mandetur vicecomiti quod non omittat propter predictam libertatem quin exequatur preceptum Domini Regis & quod scire faciat ballivis quibus fecit returnum quod sint ad diem in brevi contentum ad respondendum quare de precepto Domini Regis executionem non fecerunt. Et si ad diem venerint & se acquiescent quod returnum brevis eis non fuit factum statim condemnentur vicecomes domino illius libertatis & similiter parti lese et

to take Assizes, that they shall inquire by such as were present at the Deliverance of the Writ to the Sheriff, if they knew of the Deliverance, and an Inquest shall be returned. And, if it be found by the Inquest, that the Writ was delivered to him, Damages shall be awarded to the Plaintiff or Demandant; having respect to the Quality and Quantity of the Action, and to the Peril that might have come to him by reason of the Delay that he sustained; and by this Mean there shall be Remedy when the Sheriff returneth that the Writ came too late, whereby he could not execute the King's Commandment. Oftentimes also Pleas be delayed by reason that the Sheriff returneth that he hath commanded the Bailiffs of some Liberty which did nothing therein, and nameth Liberties that never had the Return of Writs; whereupon our Lord the King hath ordained, That the Treasurer of the Exchequer shall deliver to the Justices in a Roll all the Liberties in all Shires that have Return of Writs. And if the Sheriff answer that he hath made Return to a Bailiff of another Liberty than is contained in the said Roll, the Sheriff shall be forthwith punished as a Disheritor of our Lord the King and his Crown. And if peradventure he return that he hath delivered the Writ to a Bailiff of some Liberty that indeed hath Return, the Sheriff shall be commanded, that he shall not spare for the aforesaid Liberty, but shall execute the King's Precept; and that he

No. 4.
13 Edward I.
stat. 1. c. 39.

The Sheriff
returneth a Liberty where
none is.

Non omittas
propter aliquam
libertatem.

No. 4.
13 Edward I.
stat. 1. c. 39.

The Sheriff's
Defaults in re-
turning of Is-
sues.

' make known to the Bailiffs,
' to whom he returned the
' Writ, that they be ready at
' a Day contained in the Writ,
' to answer why they did not
' execute the King's Precept.
' And if they come at the Day,
' and acquit themselves, that
' no Return was made to them,
' the Sheriff shall be forthwith
' condemned to the Lord of the
' same Liberty, and likewise
' to the Party grieved by the
' Delay, for to render Dama-
' ges. And if the Bailiffs come
' not in, at the Day, or do
' come, and do not acquit
' themselves in Manner afore-
' said; in every judicial Writ,
' so long as the Plea hangeth,
' the Sheriff shall be command-
' ed that he shall not spare for
' the Liberty, &c. (1). Many
' Times also Sheriffs make false
' Returns as touching these
' Articles, *Quod de exitibus*, &c.
' returning sometime and ly-
' ing, that there be no Issues,
' sometime that there are small
' Issues, when they may return
' great, and sometimes do make
' mention of no Issues; where-
' fore it is ordained and agreed,
' That if the Plaintiff demand
' hearing of the Sheriff's Re-
' turn, it shall be granted him;
' and if he offer to aver
' that the Sheriff might have
' returned greater Issues unto

Ex Rot. in Turr. Lond.

per dilationem in restitutionem dampnorum. Et si ballivi ad diem non venerint & supra dicto modo se non acquietaverint in quolibet brevi de Judicio quam diu durat placitum precipiatur vicecomiti quod non omittat propter libertatem, &c. Multotiens etiam falsum dant responsum quoad illum articulum *Quod de exitibus*, &c. mandantes aliquando & mentientes quod nulli sunt exitus aliquando quod parvi sunt cum de majoribus respondere possunt aliquando non facientes mentionem de exitibus propter quod ordinatum est & concordatum quod si querens petat auditum responsionis vicecomitis concedatur ei & si offerat verificare quod vicecomes de majoribus exitibus respondere potuit fiat ei breve de Judicio ad Justitarios ad assisas capiendas assignatos quod inquirent in presentia vicecomitis si interesse voluerit de quibus & quantis exitibus vicecomes respondere potuit a die receptionis brevis usque ad diem in brevi contentum. Et cum inquisitio retornata fuerit si de pleno prius non respondit one retur de superplusagio per extortas liberatas ad scaccarium & nihilominus graviter amercietur pro concealamento. Et sciat vicecomes quod redditus

(1.) This Branch concerning the *Non omittas* is in Affirmance of the Common Law; 2 Inst. 452. See as to the Nature and Origin of Special Liberties, Gilb. C. B. 25. It is now settled that a Writ of *Non omittas* may issue to the Sheriff in the first Instance, and without being preceded by a Common Writ and a Return of the Sheriff *Mandam Bullias* thereon; *Caurrett v. Smallpage*, 9 East 330; in which it was ruled, that no Action could be maintained by the Bailiff of the Liberty against the Party suing out such Writ. In *Grant v. Bagge*, 9 East, 128, Trespass was maintained against the Bailiff of the Isle of Ely, for executing a Writ of Fi. Fa. directed to him in the first Instance by the Court of B. R. In *Bowring v. Pritchard*, 14 E. 289, a Defendant arrested by a Writ directed in the first Instance to the Bailiff of Southwark, was discharged out of Custody.

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blada in grangia & omnia mobilia preter equitaturam indumenta & utensilia domus continentur sub nomine *Exituum*. Precipit Dominus Rex quod vicecomites pro hujusmodi falsis responsis semel & iterum si sit necesse per Justic' castigentur Et si tertio deliquerint alius non apponet manum quam Dominus Rex. Multitens etiam dant responsum mandando quod non potuerunt prosequi preceptum Regis propter resistantiam potestatis alicujus inagnatis de quo caveant vicecomites decetero quia hujusmodi responsio multum redundat in dedecus Domini Regis. Et quam cito ballivi sui testificantur quod invenerunt hujusmodi resistantiam statim omnibus omissis assumpto secum posse comitatus sui eat in propria persona ad faciendam executionem Et si inveniat subballivos mendaces puniat eos per prisonam ita quod alii per eorum penam castigentur Et si inveniat eos veraces castiget resistentes per prisonam a qua non deliberentur sine speciali precepto Domini Regis. Et si forte vicecomes cum venerit resistantiam invenerit certificet curiam de nominibus resistantium auxiliantium consentientium precipientium & fautorum & per breve de Judicio attachentur per corpora ad veniendum ad curiam Et si de hujusmodi resistantia convincantur [puniantur] secundum quod Domino Regi placuerit. Nec intromittat se aliquis minister Domini Regis de pena hujusmodi infligenda quia Dominus Rex hoc specialiter sibi reservat pro eo quod hujusmodi resistentes censentur pacis sue & regni perturbatores.

M

the King, he shall have a Writ judicial unto the Justices assigned to take Assizes, that they shall inquire in Presence of the Sheriff (if he will be there) of what and how great Issues the Sheriff might have made Return from the Day of the Writ purchased unto the Day contained in the Writ. And when the Inquest is returned, if he have not afore answered for the Whole, he shall be charged with the Overplus by the Extreats of the Justices delivered in the Exchequer, and nevertheless shall be grievously amerced for the Concealment. And let the Sheriff know that Rents, Corn in the Grange, and all Moveables (except Horse, Harness, and Household-stuff) be contained within the Name of *Issues*. And the King hath commanded that the Sheriffs shall be punished by the Justices once or twice (if Need be) for such false Returns; and if they offend the third Time, none shall have to do therein with but the King. They make also many Times false Answers, returning that they could not execute the King's Precept for the Resistance of some great Man; wherefore let the Sheriffs beware from henceforth for such Manner of Answers redound much to the Dishonour of the King. And as soon as his Bailiffs do testify that they found such Resistance, forthwith all Things set apart (taking with him the Power of the Shire) he shall go in proper Person to do Execution; and if he find his Underbailiffs false, he shall punish them

No. 4.
13 Edward 1.
st. 1. c. 39.

What shall be
accounted *Issues*.

The Sheriff
returneth that
there was Disturbance of Execution of *Process*.

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No. 4.
Edward I.
st. 1. c. 39.

'by Imprisonment, so that
' either by their Example may
' be reformed; and if he
' do find them true, he shall
' punish the Resisters by Im-
' prisonment, from whence
' they shall not be delivered
' without the King's special
' Commandment. And if per-
' case the Sheriff when he
' cometh do find Resistance,
' he shall certifie to the Court
' the Names of the Resisters,
' Aiders, Consenters, Com-
' manders, and Favourers, and
' by a Writ judicial they shall
' be attached by their Bodies
' to appear at the King's Court:
' And if they be convict of
' such Resistance, they shall
' be punished at the King's
' Pleasure. Neither shall any
' Officer of the King's meddle
' in assigning the Punishment,
' for our Lord the King hath
' reserved it specially to him-
' self, because that Resisters
' have been reputed Disturbers
' of his Peace, and of his
' Realm.'

No. 5.

Edward I. st. 1. c. 5.—An Indenture shall be made
between the Sheriff and Bailiff of Liberty of every
Return.

No. 5.
Edward I.
st. 1. c. 5.

AND because it is many
Times complained in
the King's Courts upon Re-
turns, that Bailiffs of Fran-
chises (having full Power to
return the King's Writs)
have delivered to Sheriffs,
' that have been after chang-
' ed, and otherwise returned
' into the King's Court, to the
' great Damage of some of the
' Parties, and the Delay of
' Rights;" 'it is agreed, That

ET pur ceo qe sovenere
pleinte ad este fait en la
Court le Roi qe les retourns
qe baillifs des fraunchises qe
unt pleyn retour des briefs le
Roi unt livez as viscontes
apres unt este chaungez & en
autre manere retournez en la
Court le Roi a grant damage
des ascuns des parties & en
delayance de droiture Acorde
est qe des retourns qe desore
se ferront as viscontes par bail-

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lifs des tieles fraunchises soit fait endenture plenere entre le baillif de la fraunchise noine par son propre noun & le viscounte nome par son propre noun. Et si nul viscounte chaunge retourne issint livere a li par endenture & de ceo soit atteint a la sute le Seignur de la fraunchise dont il avera tiel retourne resceu sil le Seignur avera damage encoru ou sa fraunchise soit enblemie & a la sute la partie qe avera damage encoru par cel encheison soit puni de vers le Roi, com de faus retourne & rende au Seignur & a la partie damage a double. Aussint est accorde qe desore Viscontes & autres Baillifs qe resceivent brefs le Roi returnables en sa court mettent leur propre nouns ove leur returnes issint qe le court puisse savoir a qi prendre des tieux returnes si mestier seit. Et si nul viscounte ou autre baillif en ses returnes entrelesse son noun soit grevement amercie al oepz le Roi.

of Returns which hereafter shall be delivered to the Sheriff by Bailiffs of such Franchises, an Indenture shall be made between the Bailiff of the Franchise by his proper Name, and the Sheriff by his proper Name. And if any Sheriff change the Return so delivered to him by Indenture, and be thereof convict at the Suit of the Lord of the Franchise, of whom he received the Return, if the Lord have had any Damage, or if his Franchise be imblemished, and at the Suit of the Party that hath sustained Loss through that Occasion, he shall be punished by the King for his false Return, and shall yield unto the Lord and to the Party double Damages. Also it is agreed, That from henceforth Sheriffs, and other Bailiffs that receive the King's Writs returnable in his Court, shall put their own Names with the Returns, so that the Court may know of whom they took such Returns, if need be. And if any Sheriff or other Bailiff leave out his Name in his Return, he shall be grievously amerced to the King's Use.

No. 5.
25 Edward II.
st. 3. c. 5.

Sheriffs and
Bailiffs shall set
their Names to
their Returns.

No. 6.

25 Edward III. stat. 5. c. 17. — Process of Exigent shall be awarded in Debt, Detinue, and Replevin.

ENSEMENT acorde est & assentu qe auticle proces soit fait en brief de dette detenu des chateux & on prises des avers par brief de Capias & par proces d'exigend par retourne de viscount sicome est usee en brief dacompt.

ITEM it is accorded, That such Process shall be made in a Writ of Debt and Detinue of Chattels, and taking of Beasts, by Writ of Capias, and by Process of Exigent by the Sheriff's Return, as is used in a Writ of Accompt.

No. 6.
25 Edward III.
st. 5. c. 17.

No. 7.

50 Edward III. c. 5.—None shall arrest Priests or Clerks doing Divine Service.

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No. 7.
50 Edward III.
c. 5.

ITEM, because that Complaint is made to our Lord the King by the Clergy of his said Realm of *England*, that as well divers Priests bearing the sweet body of our Lord Jesus Christ to sick People, and their Clerks with them, as other wise divers other Persons of holy Church, whiles they attend to Divine Services in Churches, Churchyards, and other Places dedicated to God, be sundry Times taken and arrested by Authority Royal, and Commandment of other Temporal Lords, in Offence of God, and of the Liberties of holy Church, and also in Disturbance of Divine Services aforesaid; the same our Lord the King, who would be sore displeased if any did in such Manner, will and granteth, and defendeth upon his grievous Forfeiture, That none do the same from henceforth, so that Collusion or feigned Cause be not found in any of the said Persons of holy Church in this Behalf.

ITEM pur ceo qe pleinte est faite a nostre Seignur le Roi par le clergie de son dit Roialme d'Engleterre qe sibien diverses prestres portantz le corps nostre Seignur Jesu Christ as malades & leur clerks ovesqe eux come autrement plusours autres persones de seinte esglise tant come ils entendent as divines services es esglises cimitoires & autres lieux dediez a Dieu sont plusours foits priz & arrestuz par auctorite roiale & commandement des autres Seignours temporeles en offence de Dieu & de libertes de sa seinte esglise & auxint destourbanche des divines services avantditz meisme nostre Seignur le Roi a qi meult despleroit si nully le fist en tiel manere voet & grante & auxint defende sur sa grevoue forfaiture qe nully le face desoremes isint qe collusion ou cause feyne ne soit trove en aucun des ditz parsones de seinte esglise en celle partie.

No. 8.

1 Richard II. c. 12.—A Prisoner by Judgement shall not be let at large. Confession of a Debt to the King to delay another's Execution.

No. 8.
1 Richard II.
c. 12.

ITEM, Whereas divers People, at the Suit of the Party commanded to the Prison of the Fleet, by Judgement given in Courts of our

ITEM pur ce qe diversez gentz a suyte de partie comandez a la prison de Flete par jugement renduz en les courtes nostre dit Seignur le

In Rot in Turr. Lond.

Roi sont plusours foitz soeffiertz aler a large par le gardein de la dite prisonne alafoitz par maynpris ou baill & alefoitz sanz aucun maynpris avec une baston de Flete & sen vont en pais entour leur marchandise & autres leur besoignes & y sont longement hors du prison noutz & jourz sanz lassent de ceux a qui suyte ils y sont ajugez & sanz leur gree ent faire par ont homme ne poet jamais venir a son droit recoverer devers ticeux enprisonnez a grant meschief & anientissement de plusours gentz ordeigne est & assentuz qe desormes nul gardein de la dit prisonne de Flete soeffre aucun prisoner illoeqs estecantz par jugement al suyte de partie aler hors du prisonne par maynpris baill ne par baston sanz gree faire as ditz parties de ceo pur quoi ils y estoient ajugez si ne soit par brief ou autre mandement du Roi sur peyne de perdre son office a la garde de dite prisonne. Et enoutre si nul tiel gardein soit desore atteint par du proces qil avera soeffert ou lessetiz tiel prison aler a large encontre cest ordeinance adonques y eient les pleintifs leur recoverer vers mesmes les gardeins par brief de dette. Et auxint est ordeine qe si nully a suyte du partie ajugez a autre prison pur dette trespass ou autre quelie se voille conustre volontierement & par leynt cause detour a Roi & par tant estre ajugez a la dite prisonne de Flete pur greynour suete y avoir de prisonne qe aillours & issint delaier la partie de son recoverer soit cell reconissance receu illoeqs & sil ne soit autre part dettour a Roi de recorde soit son corps tantost remandez a la prisonne ou il estoit devant a

“ Lord the King, be ostentimes
“ suifered to go at large by the
“ Warden of the Prison, some-
“ time by Mainprise or by
“ Bail, and sometimes with-
“ out any Mainprise with a
“ Baston of the *Fleet*, and to
“ go from thence into the
“ Country about their Mer-
“ chandises and other their
“ Business, and be there long
“ out of Prison Nights and
“ Days, without their Assent
“ at whose Suit they be judg-
“ ed, and without their Gree
“ thereof made, whereby a
“ Man cannot come to his
“ Right, and Recovery against
“ such Prisoners, to the great
“ Mischief and Undoing of
“ many People;” ‘It is or-
“ dained and assented, That
“ from henceforth no Warden
“ of the *Fleet* shall suffer any
“ Prisoner there being by Judge-
“ ment at the Suit of the Party,
“ to go out of Prison by Main-
“ prise, Bail, nor by Baston,
“ without making Gree to the
“ said Parties of that whereof
“ they were judged, unless it
“ be by Writ or other Com-
“ mandment of the King, upon
“ Pain to lose his Office, and
“ the Keeping of the said Pri-
“ son. And moreover, if any
“ such Warden from henceforth
“ be attainted by due Process,
“ that he hath suffered or let
“ such Prisoner to go at large
“ against this Ordinance, then
“ the Plaintiffs shall have their
“ Recovery against the same
“ Warden by Writ of Debt.
“ And also it is ordained, That
“ if any at the Suit of the Party
“ judged to another Prison for
“ Debt, Trespass, or other
“ Quarrel, will confess himself
“ voluntarily, and by a feigned
“ Cause, Debtor to the King,
“ and by that Means to be judg-

No. 8.
Richard II.
c. 12.

The Penalty
of the Warden
of the Fleet, if
he suffer a Pri-
soner being
there by Judge-
ment, to go at
large.

The Penalty
of him who
confesseth a
Debt due to the
King, to delay
another's Exe-
cution.

No. 8.
1 Richard II.
c. 12.

ed to the said Prison of the
Fleet, there to have greater
Sweet of Prison than else-
where, and so to delay the
Party of his Recovery; the
same Recognisance shall be
there received, and if he be
not Debtor to the King of
Record, his Body shall incontinently be remanded to the
Prison where he was before,
there to remain till he hath
made Gree to the said Party,
and the same Gree made, he
shall be immediately sent
again to the Fleet, there to
abide, till he hath made Gree
to the King of his Recogni-
sance aforesaid.

Ex Rot. in Turr. Lond.

y demurer tanqil avera fait
gree a la dite partie & cell
gree fait soit immediat reman-
dez a Flete pur y demurer
tanqil avera fait gree a Roi de
sa reconissance avantdite.

No. 9.

1 Richard II. c. 15.—The Penalty for arresting of Priests
during Divine Service.

No. 9.
Richard II.
c. 15.

ITEM, Because that Pre-
lates do complain them-
selves, that as well beneficed
People of holy Church, as
other, be arrested and drawn
out as well of Cathedral
Churches, as of other Church-
es and their Churchyards,
and sometime whiles they
be intending to Divine Ser-
vices, and also in other
Places, although they be
bearing the Body of our
Lord Jesus Christ to sick
Persons, and so arrested and
drawn out, be bound and
brought to Prison against
the Liberty of holy Church:
It is ordained, That if any
Minister of the King, or
other, do arrest any Person
of holy Church by such Man-
ner, and thereof be duly con-
victed, he shall have Imprison-
ment, and then be ransomed
at the King's Will, and make

ITEM pur ce qe les Prelatz
se font pleindre qe sibien
gentz de seint eglise beneficiez
come autres sont arestuz &
horstrez sibien des eglises ca-
thedrales come des autres es-
glises & leur cimiers & tant
come ils sont alefoitz entend-
antz a divines services & aux-
int en autres lieux tout soient
ils portantz le corps nostre
Seigneur Jesu Christ as malades
& issint arestuz & hors-
trez sont liez & menez en
prisonne encontre la fraunchise
de seint eglise ordeigne est qe
si nulle ministre du Roi ou
autre face arester aucun per-
sone de seint eglise par tiel
manere & ent soient duement
convect au la prisonne & ent
soit reint al volunte le Roi &
face gree as parties issint
arestuz parvenue toutfoitz qe
les dites gentz de seint eglise
ne se tiegnent deinz les eglises

Ex Rot. in Turr. Lond.

ou sanctuaries par fraude ou
collusion en aucun manere.
Et pur ce vous mandons qe
toutes les dites estatutz facez
crier & publier & fermement
tenir parmy vostre bailly se-
lonc la forme & tenure dicelles,
& ce ne lesez en aucun ma-
nere. Don' par tesmoignance
de nostre grande seal a Westm'
le primer jour de Fevrier lan.
de nostre regne primer.

'Gree to the Parties so ar-
'rested; provided always, That
'the said People of holy
'Church shall not hold them
'within the Churches or Sanc-
'tuaries by Fraud or Collu-
'sion in any Manner. And
'therefore we command, That
'thou cause all the said
'Statutes to be cried and
'published, and firmly kept
'through thy Bailiwick, ac-
'cording to the Form and
'Tenour thereof, and that do
'not omit in any wise. Given
'under the Witness of our
'Great Seal the first Day of
'February, in the first Year of
'our Reign.'

No. 9.
Richard II.
c. 15.

No. 10.

23 Henry VI. c. 9.—No Sheriff shall let to farm his
County or any Bailiwick. The Sheriffs' and Bailiffs'
Fees and Duties in several Cases.*

Cotton *MS.*

ITEM le Roi considerant lez
graundez perjure extorsion
& oppression, queux' sount &

ITEM, The King consider-
ing the great Perjury, Ex-
tortion, and Oppression which

No. 9.
23 Henry VI.
c. 9.

* This Act, which relates to the general Administration of Justice, has certainly all the Marks and Characters which can distinguish a public Act; notwithstanding which, it was, in several Cases, regarded as a private one, and as such was regularly considered in Practice for a long Space of Time: but to the Series of Authorities in Support of this Doctrine, there was one Exception in the Case of *Mills v. Bond*, 1 Str. 399; and upon the general Question coming before the Court of King's Bench, in *Samuel v. Evans*, 2 T. R. 549, it was ruled upon the Authority of the before-mentioned Case to be a public Act.—Mr. J. Ashurst, in giving his Opinion upon that Occasion, said,

"If all the Cases on this Subject were on one Side, however apparently contrary to Reason they might be, the Court would be bound by them; but if there are several Cases, which are not repugnant to Reason on one Side, and one sensible Case to the contrary, we ought to decide according to the latter. Now, there can be no Doubt on the Reason of the Thing, but that this is a general Law; and the Case in *Strange* corroborating the Opinion that it is so, we might determine it to be such, independent of the Authority of another Act, which unquestionably makes it a general Law."

In a former Publication I availed myself of the Opportunity of this Passage, to express my Sentiments respecting the general Propriety of correcting erroneous Precedents; and as the Subject is of great Importance,

Cotton MS.

No. 10.
23 Henry VI.
c. 9.

None of the
Sheriffs' Offi-
cers shall be re-
turned upon In-
quests.

' be and have been in this
' Realm by his Sheriffs, Under-
' Sheriffs, and their Clerks,
' Coroners, Stewards of Fran-
' chises, Bailiffs, and Keepers
' of Prisons, and other Officers
' in divers Counties of this
' Realm, hath ordained by
' Authority aforesaid, in es-
' chewing of all such Extor-
' tion, Perjury, and Oppres-
' sion, that no Sheriff shall let
' to ferm, in any Manner, his
' County, nor any of his Bail-
' wicks, Hundreds, nor Wapen-
' takes; nor that the said Sher-
' riffs, Under-Sheriffs, Bailiffs
' of Franchises, nor any other
' Bailiff, shall return, upon any
' Writ or Precept to them
' directed to be returned any
' Inquests in any Panel there-
ount estees en cest Roialme
per sez Viscountez, South-
viscountez, & lour Clerks,
Coroners, Seneschallx dez
Fraunchisez, Bailiffs, & Gar-
deinz dez prisons, & autres
Officers en diversez Counteez
dicest Roialme, ad ordeigne
per lauctorite suisdit, en es-
chuyng dez toutz tielx extor-
sions, perjurie, & oppression,
que nulle Viscount lesse a ferme
en aucun manere son Counte,
ne aucun de sez Baillifwicks,
Hundrede, ne Wapentakez,
ne que lez ditz Viscountz,
Southviscountz Baillifs dez
fraunchisez, ne aucun autre
Baillif, retourne sur aucun briefe
ou precept a eux direct, de
retourner aucuns enquestez ou
aucuns panellez sur ceo destre

I shall take the Liberty of inserting the Observations which then occurred to me.

"I have always regarded this Sentiment as stopping short of the true Principle, by which the Exertion of judicial Authority ought to be regulated: and if a Court possesses the Authority of correcting an established Doctrine, supported by several Cases which are not reconcilable to Reason, because there is one sensible Precedent to the contrary, I cannot see any material Obstacle to their setting the Example of that sensible Precedent themselves. The Authority of the Court is the same to-day as yesterday; in the 44th. of Geo. III. as in the 6th. of Geo. I.; and it is very difficult to understand the Logic, by which it would be wrong for a Court to correct an erroneous Opinion to-day; but if themselves, or any other Court of concurrent Authority, had been guilty of that Wrong to-day, it would become right to follow the Example to-morrow. Would it not place the Administration of Justice upon a more respectable Basis, if it were to be held that Reason and Justice should be regarded as its first, and Precedent as only its secondary Principle, than to reverse the Disposition and to sacrifice the former at the Shrine of the latter? Admitting most willingly the beneficial Effects of Precedents, in fixing and ascertaining Principles; assenting to the Impropriety of lightly renewing Discussions upon Topics, with respect to which Reason may fairly hesitate in its Decision; and Certainty of Determination is more beneficial than a particular Conclusion on either Side; objecting to the Subversion of confessedly erroneous Opinions, when they have so incorporated themselves with the juridical System, as not to admit of Separation without inducing injurious Consequences; the only Proposition which I endeavour to establish, or rather to enforce is, that the acknowledged Conclusions of Reason and Justice shall be admitted to prevail over the accidental Sanction of Error by Precedent, when no important Reason of public Utility requires an opposite Determination."

See the Reference to Cases, as to the Statute being public or private, in Williams's Notes to 2d. Saunders, 150 a.

Cotton MS.

fait, ascuns Baillifs, Officers, ou servaunts a ascun de lez officers suisditz, en ascun pannelle per eux issint affaire, ne que null de lez ditz Officers & Ministrez, per occasion, ou south colour, de leur office, preigne ascun autre chose per eux ne per ascun autre persone a leur oeps ou availle dascun persone per eux ou ascuns de eux destre arrestuz ou attachez, ne de nulle autre pur eux, pur le lesser dascun arrest ou attachment destre fait per leur corps, ou de ascun persone per eux ou ascun de eux per force ou colour de leur office arrestuz ou attachez, pur fyn, fee, sewet de prison, maynpris, lessance a baille, ou monstraunce ascun ease ou favour a ascun tiel persone issint arrestuz ou arrestier, pur leur regard ou profit, si noun tiel come ensuist, scilicet pur le Viscount xxd. le Baillif qe face larrest ou lattachement iijjd. & le Gaoler, si le prisoner soit commis a sa garde, iijjd. Et que le Viscount, Southviscount, Clerk de Viscount, Seneschall ou Baillif de franchise, Servaunt ou Baillif, ne Coroner, preigne per colour de son office, per luy ne per ascun autre persone a son use, dascun persone pur la faisure dascun retourne ou pannelle ascun chose, & pur la copie dun panell iijjd. & que lez ditz Viscountz, & toutz autres Officers & Ministrez avaunt ditz, lesserount hors du prison toutz maners dez personez per eux ou ascun de eux arrestiers ou estcant en leur garde per

upon to be made, any Bailiffs, Officers, or Servaunts to any of the Officers aforesaid, in any Panel by them so to be made; nor that any of the said Officers and Ministers, by Occasion, or under Colour of their Office, shall take any other Thing by them, nor by any other Person to their Use, Profit, or Avail, of any Person by them, or any of them, to be arrested or attached, nor of any other for them, for the omitting of any Arrest or Attachment to be made by their Body, or of any Person by them or any of them, by Force or Colour of their Office, arrested or attached, for Fine, Fee, Suit of Prison, Mainprise, letting to Bail, or shewing any Ease or Favour to any such Person so arrested, or to be arrested, for their Reward or Profit, but such as follow; (1.) that is to say, For the Sheriff xxd. the Bailiff which maketh the Arrest or Attachment, Four-pence, and the Gaoler, if the Prisoner be committed to his Ward, Four-pence; And that the Sheriff, Under-Sheriff, Sheriff's Clerk, Steward or Bailiff of Franchise, Servant of Bailiff or Coroner, shall not take any Thing by Colour of his Office, by him nor by any other Person to his Use, of any Person for the making of any Return or Panel, and for the Copy of any Panel, but ijd. And that the said Sheriffs, and all other Officers and Ministers aforesaid,

No. 10.
23 Henry VI.
c. 9.

Fees for Arrests and Attachments.

Fees for the Copy of a Panel.

(1.) In *Martin v. Slade*, 2 N. R. 50, the Court of C. B. were clearly of Opinion, that the Regulations of this Statute could not now be considered as giving the Rule for the Fees to be taken.

Cotton MS.

No. 10. ' shall let out of Prison (2.)
23 Henry VI. ' all Manner of Persons by
c. 9. ' them or any of them arrested,

What Persons
may be bailed,
what not.

The Condi-
tions of the
Bail-bond.

' or being in their Custody, by
' Force of any Writ, Bill, or
' Warrant in any Action Per-
' sonal, (3.) or by Cause of
' Indictment of Trespass,
' (4.) upon reasonable Sureties
' of sufficient Persons, (5.)
' having sufficient within the
' Counties where such Persons
' be so let to Bail or Mainprise,
' to keep their Days, such
' Place as the said Writs, Bills,
Warrants shall require.

force dascune briefe, bille, ou
garraunt en aucun action per-
sonell, ou per cause dendié-
ment de trespas, sur resonable
suerte déz sufficeantz personez
eiantz sufficeaute deinz lez
counteez lou tielx personez
sount issint lessez a baille ou
maynpris, de garder lour jours
en tielx lieux come lez ditz
briefs, billes ou garrauntz re-
quirent; et si persone ou per-
sonez, disountz et errorent en
lour baille ou mainprison,
excutent par eux ou par leur
garant, ou par leur garant, ou
suerte de

(2.) If the Defendant tender a Bail-bond, and sufficient Sureties, and the Sheriff refuse to accept it, he is liable to a writ of Habeas Corpus in the Case, but not to an Action of Trespass. But the Refusal does not make him a Trespasser *ab initio*: see *Authors' Cases*, Williams's Note, 2 Saund. 61, c. (5.); and the Action does not lie against the Bailiff who refuses, but it must be against the Sheriff; 2 Mod. 32, *Smith v. Hall*.

(3.) In *Rex v. Daws*, 2 Salk. 608; Lord Raym. 792; it was held, that the Sheriff might take a Bail-bond in an Attachment for a Contempt, but that the Plaintiff might refuse to accept it; but the Right to take such Bail-bond has been since overruled. The following Note was added by the Editor to the Case of *Rex v. Daws*, in the sixth Edition of Salkeld: "In *Field v. Workhouse*, Com. 264, the Defendant pleaded that the Bond was taken by the Sheriff in an Attachment for Contempt of C. B., and void by Statute 23 Hen. VI., and had Judgment. King Ch. J. said, that upon an Attachment of Privilege, Attachment upon a Prohibition, or Attachments in Process upon a penal Statute, the Sheriff might take Bail, but not upon an Attachment for a Contempt. In *Say v. Ellis*, 2 Bl. Rep. 955, it appearing on Oyer of a Bond, that the Condition was to answer a Contempt in the Court of Chancery, the Defendant demurred; the Court thought if there was any Ground of Exception he should have pleaded Facts sufficient to bring the Question before the Court, and gave him Leave to plead, and Judgment was afterwards signed for Want of a Plea. In *Studd v. Acton*, 1 H. B. 468, it was ruled on Demurrer, that an Action cannot be maintained against a Sheriff for refusing to take Bail upon an Attachment out of Chancery for a Contempt. The Court did not give an Opinion whether the Sheriff had a Right to take Bail; *vi. Dwyer v. Lawson*, Pre. Ch. 110; Eq. Ab. 350; *Bland v. Riccard*, 3 Leon. 208; *Anon.* 1 Str. 479; 1 Ventr. 291; 2 Ventr. 258."

(4.) It was ruled in *Bengough v. Rosseter*, 4 T. R. 505, and on Error, 3 H. Bl. 418, that a Sheriff cannot take a Bail-bond upon an Indictment at the Quarter Sessions, and that this Provision related only to Indictments at the Term, and is in Effect repealed by 1 Ed. IV. c. 2, by which it is enacted, that the Sheriff shall not proceed in any such Indictment at the Term, but shall remove it to the next Sessions of the Peace. A writ of Habeas Corpus and Chamberlain's Writ.

The Court that it
the Sheriff's Duty to have taken a Recognizance.

(5.) This Clause was made for the Benefit of the Sheriff, and therefore, he may insist upon two Sureties, yet he may take a Bond with Surety only. *Sir William Dwyer's Cases* cited, 10 Rep. 100 b., and 1 Cases referred to in Williams's Note to 2 Saund. 61.

Cotton MS.

peas, & toutz tielx personez qi sount commys a garde per especial commaundement dascun Justice, & vagerauntz refusauntz de servir solonque la fourme del estatut dez laborers, tantseulement exceptiz. Et que nulle viscount, ne nulle dez officers ou ministrez suisditz, preigne ou face de prendre ou faire ascun obligation pur ascun cause suisditz, ou colour de leur office, sinoun tantseulement a leur mesmez, dascun persone, ne pur ascun persone qi soit en leur garde per le cours de la leye, lorsque sur le noun de leur office & sur condition que ledit prisoner appierge a la joute conteignuz en le dit briefe bille ou garraunt & en tielx lieux come le dit briefe bille ou garrant requiert. Et si ascuns de lez ditz viscountz ou autres officers ou ministrez suisditz preigne ascun obligation en autre fourme per colour de leur officez qil soit voide. Et qil ne preigne plus pur le fesaunce dascun tiel obligation, garraunt, ou

' Such Person or Persons which
' be or shall be in their Ward
' by Condemnation, Execution,
' *Capias Uilagat* or *Excommu-*
' *nication*, Surety of the Peace,
' and all such Persons which
' be or shall be committed to
' Ward by special Command-
' ment of any Justice, and Va-
' gabonds refusing to serve ac-
' cording to the Form of the
' Statute of Labourers only ex-
' cept. And that no Sheriff,
' nor any of the Officers or
' Ministers aforesaid, shall
' take or cause to be taken, or
' make, any Obligation for any
' Cause aforesaid, or by Colour
' of their Office, but not only to
' themselves, (6.) of any Per-
' son, nor by any Person which
' shall be in their Ward by the
' Course of the Law, but by the
' Name of their Office, (7.) and
' upon Condition written, that
' the said Prisoners shall appear
' at the Day contained in the
' said Writ, Bill or Warrant,
' and in such Places as the said
' Writs, Bills or Warrants shall
' require. (8.) And if any of

No. 10.
23 Henry VI.
c. 9.

(6.) An Undertaking to the Bailiff of the Sheriff is void; *Rogers v. Reeves*, 1 T. R. 418.

(7.) In Error in Debt on Bail-bond, it was excepted that it was not shewn that the Bond was to the Sheriff by the Name of his Office. The Court were of Opinion that it should so appear, but they thought that it did sufficiently appear on the whole Declaration; it being *solvend' eidem Vicecomiti et assignatis*.

(8.) The Decisions respecting Bail-bonds upon this Statute are stated in Sergeant Williams's Note to 2 Saunders 60, from which the following is an Extract, with the Exception of the Passages in Brackets.

The Nature and Form of the Security required by the second Branch of the Statute is Bond. [The constant Usage since the passing of the Act has been to take Security by Bond; but this is only a simple Contract, and not of so high a Nature as the Security which was intended by the Statute; per Ashurst J., *Rogers v. Reeves*, 2 Turn. Rep. 418, cited in another Point, *supra*.] The Condition of the Bond must be for the Appearance of the Party at the Return of the Writ, and for no other Purpose; so that if there be any other Condition expressed in the Bond, or the Bond be single without any Condition at all, or be with an impossible one, [as when it was given on the fourth of November, with Conditions to appear on the third, as in *Samuel v. Evans*.] the Bond is void by the Statute; 1 T. R. 418; *Rogers v. Reeves*, Cro. Eliz. 862; *Cotton v. Wile*, *ibid* 872; *Scriven v. Dyther*, Dyer 119, 120; 10 Rep. 100 n. b. 101 a.; *Beawages's Case*, 3 Lev. 74, 75; *Graham v. Crawshaw*, 1 Str. 399; *Mills v. Bond*, S. C. Fortesc. 362;

Cotton MS.

No. 10.
23 Henry VI.
c. 9.

The Sheriff
shall make De-
puties in the
King's Courts.

' the said Sheriffs, or other Of-
' ficers or Ministers aforesaid,
' take any Obligation in other
' Form by Colour of their Of-
' fices, that it shall be void ;
' and that he shall take no
' more for the making of any
' such Obligation, Warrant or
' Precept by them to be made,
' but Four-pence. And also
' that every of the said Sheriffs
' shall make yearly a Deputy
' in the King's Courts of his
' Chancery, the King's Bench,
' the Common Place, and in
' the Exchequer, of Record,
' before that they shall return
' any Writs, to receive all
' Manner of Writs and War-
' rants to be delivered to them :
' And that all Sheriffs, Under-
' Sheriffs, Clerks, Bailiffs, Gao-
' lers, Coroners, Stewards, Bai-
' liffs of Franchises, or any
' other Officers or Ministers,
' which do contrary to this Or-
' dinance in any Point of the
' same, shall lose to the Party

precept, per eux destre fait,
forsque iiii. d. Et auxint que
chescune de lez ditz viscountz
face annuellement un depute en
lez courtz du Roi de sa Chaun-
cerie, Bank du Roy, Commune
Bank, & Leschequer, de re-
corde, devaunt ceo qils retour-
nent ascuns briefs de reseui-
ver toutz maners dez briefs &
garrant a eux destre deliverez.
Et qe toutz lez viscountz,
southviscountz, clerks, bailiffs,
gaolers, coroners, seneschallx,
bailiffs dez fraunchisez, ou
ascuns autres officers ou minis-
trez, queux fount le contrarie
dicest ordeignauce ou dascun
point dicelle, perde a la partie
en, ycelle endamage ou greve
sez treblez damages & forface
la somme de xl. li. a chescune
temps que eux ou ascun de eux
fount le contrarie dicelle en
ascun point dicelle, dount le
Roi davoir lune moite, ceo
destre employez a le use de son
hostiel, & en null autre manere,

2 T. R. 569; *Samuel v. Evans*. But the Statute is confined to Obligations given to the Sheriff, and does not extend to such as are given to or for the Benefit of the Plaintiff: therefore, when an Attorney undertakes to appear for the Defendant, he is bound to do so, and the Court will enforce a Performance of such his Contract with the Plaintiff by Attachment, though his Undertaking be not in the Form prescribed by the Statute; *Cro. Eliz.* 190; *Milward v. Clarke*, 1 Sid. 182; *Benshin v. French*, S. C. 1 Lev. 98; 1 T. R. 488; *Rogers v. Reeves*. So a Bond given to the Plaintiff in another Form than that which the Statute prescribes is valid; 2 Mod. 304, 305. If it appears on the Face of the Declaration, or upon Oyer, that the Bond is void by the Provisions of the Statute, the Defendant may demur; but if it do not, he must plead the Statute; or if by pleading, or otherwise, the Objection appears in any Part of the Record, he may move in Arrest of Judgment. [See more as to Pleading upon this Subject in the Note from which these Extracts are made, and also Williams's Note, 2 Saunders, 155 a.] The Bond must be taken before the Return of the Writ, otherwise it is void; 1 Ld. Raym. 352; *Palmer v. Benson*. But it is not required by the Statute to insert the Nature of the Action in the Conditions of the Bond; if it sets forth the Parties, and the Time and Place of Appearance substantially, it is sufficient; therefore a mere Informality or Variance between the Condition and Process in the Description of the Action, or of the Time and Place of Appearance, does not vitiate the Bond. [See the several Cases in Support of this Position mentioned in the Note, to which add *Jones v. Stordy*, 2 E. 55.]

[For the Assignment of the Bail-bond, see Statute 4 Anne, c. 16, ante Part II. Class I. No. 23; and see further as to Proceedings on the Bail-bond and the Assignment thereof, and the summary Jurisdiction exercised by the Court upon the Subject; Williams's Notes, 2 Saund. 61.]

Cotton *MS.*

& lautre moite a celluy qui ceo voet suer. Et que lez Justices dez assisez en lour sessions, Justices del un Bank & del autre, & Justices de la peas en lour pais, eient pouair denquerer, oier & terminer, doffice, saunz especial commission, de & sur toutz iceux qui ferrount le contraire dicest ordeignauce en chescune article ou point dicelle. E si lez ditz viscountz retournent sur ascun persone cepi corpus, ou reddidit se, qils soient chargeablez davoier le corps dez ditz persones a lez jours de la retourne dez ditz briefs, billez, ou garrants, en tiel fourme come ils furent devaunt la fesaunce dicest acte.

Porveu toutzfoitz, que per cest present ordeignauce le Gardeyn de la gaole le Roy de Flete, & de la paleys du Roi a Westminster, pur le temps esteant ne soit endamage ne prejudice en son duete de son office. Et auxint que cest ordeignauce commencera en la fest de pasque que sera en lan ne nostre Seignur Jesu Crist. M.CCCC. xlvj.

'in this Behalf indamaged or
'grieved, his treble Damages,
'and shall forfeit the Sum of
'xl. li. at every Time that they
'or any of them do the contra-
'ry thereof in any Point of the
'same; whereof the King shall
'have the one Half, to be em-
'ployed to the Use of his
'House, and in no other wise,
'and the Party that will sue,
'the other Half. And that the
'Justices of Assises in their
'Sessions, Justices of the one
'Bench and of the other, and
'Justices of Peace in their
'County, shall have Power to
'inquire, hear, and determine
'of Office without special Com-
'mission, of and upon all them
'that do contrary to these Or-
'dinances in any Article or
'Point of the same. And if
'the said Sheriffs return upon
'any Person, *Cepi Corpus*, or
'*Reddidit se*, that they shall
'be chargeable to have the Bo-
'dies of the said Persons at the
'Days of the Returns of the
'said Writs, Bills, or Warrants,
'in such Form as they were
'before the making of this
'Act, (9.)

No. 10.
23 Henry VI.
c. 9.

The Forfeitures of the Offenders, and who shall have them.

The Sheriff returning *Cepi Corpus*, or *Reddidit se*.

'II. Provided always,
'That the Warden of the
'King's Gaol of the Fleet, and
'of the King's Palace of West-
'minster for the Time being,
'shall not be endamaged nor
'prejudiced by this Ordinance
'in the Duty of his Office.
'And also that this Ordinance
'shall begin at the Feast of
'Easter which shall be in the
'Year of our Lord MCCCC
'xlvj.

The Warden of the Fleet and of the Palace of Westminster exempted.

(9.) The Sheriff is not liable to an Action for taking insufficient Bail, but is liable to be amerced if he have not the Body at the Return of the Writ; *Postorne v. Hanson*, 2 Saund. 51, (n.); and see Williams's Notes, *ibid*, in which the Duty and Liability of the Sheriff are fully explained.

No. 11.

19 Henry VII. c. 9. — Process in Actions upon the Case sued in the King's Bench and Common Pleas.

No. 11.
19 Henry VII.
c. 9.

What Process
shall be awarded
in Actions upon
the Case sued
in the King's
Bench, or Com-
mon Bench.

FORASMUCH as before this Time there hath been great Delays in Actions of the Case, that hath been sued as well before the King in his Bench, as in his Court of his Common Bench, because of which Delays many Persons have been put from their Remedy: Be it therefore ordained, enacted, and established by the King our Sovereign Lord, by the Advice and Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That like Process be had hereafter in Actions upon the Case, as well sued and hanging, as to be sued, in any of the said Courts, as in Actions of Trespass or Debt.

No. 12.

43 Elizabeth, c. 6. — An Act to avoid trifling and frivolous Suits in Law in her Majesty's Courts in *Westminster*.

[See post, Title *Cass*. — By Section 1, a Penalty is imposed upon Sheriffs making a Warrant for Arrest or Summons until they have received the Writ.]

No. 13.

13 Charles II. stat. 2. c. 2. — An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.*

No. 13.
13 Charles II.
stat. 2. c. 2.

The ancient
fundamental
Law in proceed-
ing to Arrests
upon Suits, to
express the true
Cause of Ac-
tion in the Pro-
cess.

WHEREAS by the ancient and fundamental Laws of this Realm, in Case where any Person is sued, impleaded or arrested by any Writ, Bill or Process issuing out of any of his Majesty's Courts of Record at *Westminster*, in any common Pleas, at the Suit of any common Person, the true Cause of Action ought to be set forth and particularly expressed in such Writ, Bill or Process, whereby the Defendant may have certain Knowledge of the Cause of the Suit, and the Officer who shall execute such Writ, Bill or Process, may know how to take Security for the Appearance of the Defendant to the same, and the Sureties for such Appearances may rightly understand for what Cause they become engaged; and whereas there is a great Complaint of the People of this Realm, that for divers Years now last past, very many of his Majesty's good Subjects have been arrested upon general Writs of Trespass, *Quare clausum fregit*, Bills of *Middlesex*, *Latitans*, and other like Writs issued out of the Courts of the

* See Williams's Note, 2 Saund. 52.

' King's Bench and Common Pleas, not expressing any particular or certain Cause of Action, and thereupon kept Prisoners for a long Time for Want of Bail, Bonds with Sureties for Appearances having been demanded in so great Sums that few or none have dared to be Security for the Appearances of such Persons so arrested and imprisoned, although in Truth there hath been little or no Cause of Action; and oftentimes there are no such Persons who are named Plaintiffs, but those Arrests have been many Times procured by malicious Persons to vex and oppress the Defendants, or to force from them unreasonable and unjust Compositions for obtaining their Liberty; and by such evil Practices many Men have been, and are daily undone, and destroyed in their Estates, without Possibility of having Reparation, the Actors employed in such Practices having been (for the most Part) poor and lurking Persons, and their Actions so secret, that it hath been found very difficult to make true Discoveries or Proof thereof.'

No. 13.
13 Charles II.
stat. 2. c. 2.

II. For Remedy and Prevention of which so great growing Evils and Mischiefs, and also for discouraging all frivolous and unjust Suits, and causeless Arrests for the future; be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twelfth Day of February, in the Year of our Lord one thousand six hundred sixty and one, no Person or Persons who shall happen to be arrested by any Sheriff, Under-Sheriff, Coroner, Steward, or Bailiff of any Franchise or Liberty, or by any other Officer, Minister, Under-Bailiff, or other Person or Persons whatsoever, within this Realm, having or pretending to have Authority or Warrant in that Behalf, by Force or Colour of any Writ, Bill, or Process issuing or to be issuing out of his Majesty's said Courts of the King's Bench and Common Pleas, or either of them, in which said Writ, Bill or Process, the Certainty and true Cause of Action is not expressed particularly, (1.) and for which the Defendant or Defendants in such Writ, Bill or Process named, is and are bailable by the Statute in that Behalf made in the three and twentieth Year of the Reign of the late King Henry the Sixth, shall be forced or compelled to give Security, or to enter into Bond with Sureties, for the Appearances of such Person or Persons so arrested, at the Day and Place in the said Writ, Bill or Process specified or contained, in any Penalty or Sum or Sums of Money, exceeding the Sum of Forty Pounds of lawful Money of England, to be condition-

Persons arrested by Process out of the King's Bench or Common Pleas, not expressing the Cause of Action, how to be bailed and set at Liberty, upon their own Bonds for Appearance.

23 H. 6. c. 9.

(1.) This Statute (without any such Intention in the Makers) had like to have ousted the King's Bench of all its Jurisdiction over civil Injuries without Force; for as the Bill of Middlesex was framed only for Actions of Trespass, a Defendant could not be arrested and held to Bail thereupon for Breaches of civil Contracts. But to Remedy this Inconvenience, the Officers of the King's Bench devised a Method of adding what is called a Clause of *ac etiam* to the usual Complaint of Trespass; 3 Bl. Comm. 287.

No. 13.
23 Charles II.
stat. 2. c. 2.

ed for such Appearances; and that all Sheriffs and other Officers and Ministers aforesaid shall let to Bail and deliver out of Prison, and from their and every of their Custodies respectively, all and every Person and Persons whatsoever, by them or any of them arrested upon any such Writ, Bill or Process, wherein the Certainty and true Cause of Action is not particularly expressed, upon Security in the Sum of Forty Pounds and no more, given for Appearance of such Person or Persons so arrested unto the said Sheriff or Officer aforesaid, according to the said Statute in the said three and twentieth Year of the Reign of the said late King *Henry the Sixth* in that Behalf made and provided.

Bonds (given for) discharged upon Appearance.

Nonsuit for Want of a Declaration before the End of the next Term after Appearance, and Judgment and Costs against the Plaintiff.

23 H. 8. c. 15.

Arrests upon Capias Utilegatum, Attachments upon Rescous, Contempts, and of Privileges, excepted.

III. And be it further enacted by the Authority aforesaid, That upon Appearance to be entered in the Term wherein such Writ, Bill or Process is returnable, with the respective Officer in that Behalf, for the said Person or Persons, by Attorney or Attornies in the said respective Courts from whence the said Writ, Bill or Process issued, unto such Writ, Bill or Process, the Bond or Bonds so given for Appearance thereunto, be and are hereby satisfied and discharged; and that after such Appearance so entered, no Amerciaments be set or estreated upon or against any Sheriff or other Officer aforesaid, or any other Person whatsoever, concerning the want of such Appearance; and unless the Plaintiff or Plaintiffs in any such Writ, Bill or Process named, shall put into the Court from whence such Writ, Bill or Process did issue, his or their Bill or Declaration against the Person or Persons so arrested, in some personal Action, or *Ejectione firme* of Lands or Tenements, before the End of the Term next following after Appearance, that then a Nonsuit for want of a Declaration may be entered against the said Plaintiff or Plaintiffs in the said Courts respectively; and that every Defendant in every such Writ, Bill or Process named, shall or may have Judgment to recover Costs against every such Plaintiff or Plaintiffs, to be assessed, taxed and levied in such Manner, and according as it is provided by the Statute for Costs, made in the three and twentieth Year of the Reign of the late King *Henry the Eighth*; any former or other Act, Statute, Ordinance, Law, Custom, Order, Course or Usage of either of the said Courts, to the contrary thereof heretofore had, made, admitted or used, in any wise notwithstanding.

IV. Provided always, That this Act, nor any Clause or Thing herein before specified or contained, shall not extend, nor be construed or taken to extend, unto any Arrests hereafter to be made upon or by virtue of any Writ of *Capias Utilegatum*, Attachment upon Rescous, or Attachment upon any Contempt, or of any Attachment of Privilege at the Suit of any privileged Person, or of any other Attachment for Contempt whatsoever, issuing or to be issuing out of either of the said Courts, although there be no particular Certainty of the Cause of Action expressed or contained in the said Writs; but that nevertheless no Sheriff nor Under-Sheriff, nor any of the Officers or Ministers

aforesaid, shall discharge any Person or Persons taken upon any Writ of *Capius Utlagatum* out of Custody, without a lawful *Supersedeas* first had and received for the same: And that upon the said Writs of Attachment, such lawful Course be taken for Security for Appearance therein as hath been heretofore used; any Thing herein-before expressed to the contrary thereof in any wise notwithstanding.

V. And whereas many Persons, out of ill Intent to delay their Creditors from recovering their just Debts, continue Prisoners in the *Fleet*, who cannot be proceeded against in such Manner as they might be, if they were at large: Now for the better enabling all Persons to recover their just Debts and Demands against such Prisoners, be it further enacted by the Authority aforesaid, That every Person or Persons whatsoever, who now hath or have, or which at any Time hereafter shall have, Cause of any personal Action against any Person being a Prisoner, in the Prison of the *Fleet*, may sue forth an Original Writ upon his or their Cause of Action; and that a Writ of *Habeas Corpus* be granted to every such Person or Persons, being Plaintiff or Plaintiffs, desiring the same, to be directed to the Warden of the same Prison, to have the Body of such Prisoner before the Justices of the Common Pleas, at some certain Day in any Term, to answer the said Plaintiff or Plaintiffs upon his or their said Cause of Action; and that if the said Plaintiff or Plaintiffs at the said Day, put into the said Court his or their Declaration, according to the said Original Writ, against the said Prisoner being present at the Bar, the said Prisoner shall be bound to appear in Person, or to put in an Attorney to appear for him in the said Action; and unless the said Defendant plead upon a Rule given, to be out at eight Days at the least after such Appearance, Judgment by *Nihil dicit* may be entered against such Defendant as appearing in Person, which shall be good and effectual in Law: And such Charge in Court by Declarations, signified by Rule unto the said Warden, shall be a good Cause of Detention of such Prisoner in his Custody, from which he shall not be discharged without a lawful *Supersedeas* or Rule of Court: And if the said Warden shall do otherwise, he shall be responsible to the Court, and to the Party grieved, for Damages, by Action upon the Case to be brought against him for discharging such Prisoner.

VI. And whereas very many Suits commenced by Original Writs have been protracted and long delayed from Judgment and Execution, by reason of the Necessity of having fifteen Days at the least between the Days of the *Teste* and the Days of Return of Writs now used in personal Actions, and also in Action *Ejectione firmæ*, for Lands and Tenements: For Remedy thereof, and for the more easy expediting Trials, and the better and more speedy executing of Judgments for the Time to come, be it further enacted by the Authority aforesaid, That in all Actions of Debt, and all other personal Actions whatsoever, and also in all Actions of *Ejectione firmæ*, for Lands and Tene-

No. 13.
13 Charles II.
stat. 2. c. 2.

How Persons
having Cause of
Action may
proceed against
Prisoners in the
Fleet.

Delays in Suits
by reason of 15
Days between
the *Teste* and
Return of
Writs, remedied
in Actions
personal.

Ejectione firmæ

No 13
13 Charles II
Stat 2 c 2

¶ *venire facias*,
¶ *Habeas corpus*
¶ *Writ of*
¶ *Districus Ju-*
¶ *rator, Writ*
¶ *facias, Capias*
¶ *ad satisfaci-*
¶ *endum.*

where Exigent
lieth after Judg-
ment, or to
make the
Bail appear, ex-
cepted

3 Jac 1 c 8
receiving stay-
ing Exigent
by Supersedeas
or Writ of Er-
ror, and in
which Actions
may be stayed

ments now depending, or which at any Time hereafter shall be depending, by Original Writ, in either of his Majesty's Courts aforesaid, after any Issue therein joined to be tried by a Jury, and also after any Judgment had or obtained, or to be had or obtained, in either of the Courts aforesaid, in any such Action as aforesaid, there shall not need to be fifteen Days between the Tenth Day and the Day of Return of any Writ or Writs of *Venire facias*, *Habeas corpus* *Juratum*, or *Districus Juratores*, Writ of *Exigent facias*, or Writs of *Capias ad satisfaciendum*. And that the Want of fifteen Days between the Tenth Day and the Day of Return of any such Writ, shall not be, nor shall be assigned, taken or adjudged to be, any Matter or Cause of Error; any Law, Custom, Statute, Course or Usage to the contrary thereof in any wise notwithstanding.

VII. Provided nevertheless, That this Act, nor any Thing therein contained, shall not extend or be construed to extend to any Writ of *Capias ad satisfaciendum* whereon a Writ of Exigent after Judgment is to be awarded, nor to *Capias ad satisfaciendum* against the Defendant in order to make any Bail liable, but that the same continue and be as if this Act had never been made.

VIII. And whereas by an Act of Parliament made in the third Year of the Reign of our late Sovereign Lord King James of blessed Memory, a very good Law was made for avoiding unnecessary Delay of Execution, whereby it is enacted, That no Execution shall be stayed or delayed upon or by any Writ of Error or Supersedeas thereupon to be sued for the reversing of any Judgment to be given in any Action or Bill of Debt, upon any single Bond for Debt, or upon any Obligation with Condition for Payment of Money only, or upon any Action or Bill of Debt for Rent, or upon any Contract sued in any of his Highness Courts of Record at Westminster, or in the Counties Palatine of Chester, Lancaster, or Durham, or in his Highness Courts of Great Sessions in any of the twelve Shires of Wales, unless such Person or Persons, in whose Name or Names such Writ of Error shall be brought, with two sufficient Sureties, such as the Court wherein such Judgment is or shall be given, shall allow of, shall first, before such Stay made, or Supersedeas to be awarded, be bound to the Party for whom any such Judgment was or should be given, by Recognizance to be acknowledged in the same Court in double the Sum adjudged, to be recovered by the said former Judgment, to prosecute the said Writ of Error with Effect, and also to satisfy and pay (if the said Judgment shall be affirmed) all and singular the Debts, Damages and Costs adjudged or to be adjudged upon the former Judgment, and all Costs and Damages to be also awarded for the same Delaying of Execution; which Law hath been found by Experience to be very good and beneficial to the Commonwealth: And forasmuch as divers other Cases within the same Mischief, by Delays and Staying of Execution by Writs of Error and Supersedeas thereupon, are not provided for by the said

‘Statute:’ For further Remedy against Delays and Stayings of Executions in the several Actions hereafter specified,

No. 13.
13 Charles II.
stat. 2. c. 2.

IX. Be it further enacted and ordained by the Authority aforesaid, That from and after the twentieth Day of *January*, in the Year of our Lord one thousand six hundred sixty and one, no Execution shall be stayed in any of the Courts aforesaid, by any Writ or Writs of Error or *Supersedeas* thereupon, after any Verdict and Judgment thereupon obtained, in any Action of Debt grounded upon the Statute made in the second Year of the Reign of the late King *Edward* the Sixth, for not setting forth of Tithes, nor in any Action upon the Case upon any Promise for the Payment of Money, Actions *sur Trover*, Actions of Covenant, Detinue and Trespass, unless such Recognizance, and in such Manner, as by the said recited former Act is directed, shall be first acknowledged in the said Court where such Judgment is given.

In what Actions Executions may be stayed (by Writ of Error) by this Statute.

2 & 3. Ed 6.
c. 13.

X. And be it also enacted by the Authority aforesaid, That if any Person or Persons after the said Day shall sue or prosecute any Writ or Writs of Error for Reversal of any Judgment whatsoever given after any Verdict in any of the Courts aforesaid, and the said Judgment shall afterwards be affirmed, then every such Person or Persons shall pay unto the Defendant or Defendants in the said Writ or Writs of Error, his or their double Costs, to be assessed by the Court where such Writ of Error shall be depending, for the Delaying of Execution.

The Defendant to have double Costs for Delays of his Execution by Writ of Error.

XI. Provided nevertheless, That this Act, nor any Thing therein contained, shall not extend to any Action popular, nor unto any other Action which is or hereafter shall be brought upon any penal Law or Statute (except Debt for not setting out Tithes as aforesaid) nor to any Indictment, Presentment, Inquisition, Information, or Appeal: any Thing herein-before expressed to the contrary thereof notwithstanding.

Popular Actions; or upon a Penal Law, Indictments, &c. not within this Statute

No. 14.

22 & 23 Charles II. c. 20. — An Act for the Relief and Release of poor distressed Prisoners for Debt.

‘FORASMUCH as very many Persons now detained in Prison, are miserably impoverished, either by reason of the late unhappy Times, the sad and dreadful Fire, their own Misfortunes, or otherwise, so as they are totally disabled to give any Satisfaction to their Creditors, and so become, without Advantage to any, a Charge and Burden to the Kingdom, and by Noisomeness (Inseparably incident to extreme Poverty) may become the Occasion of Pestilence and contagious Diseases, to the great Prejudice of the Kingdom, &c.

No. 14.
22 & 23 Charles II. c. 20.

Enforced by 2 Geo. 2. c. 22.

‘IX. And whereas it is found by common Experience, That such Person or Persons that are under Arrests or com-

No Sheriff, Bailiff, or other Officer, shall

No. 14.
22 & 23 Charles
II. c. 20.

carry any Per-
son to any Ta-
vern, Alehouse,
&c. or call for
any Wine or
Ale, without his
Free Consent;

nor demand or
receive greater
Sum than what
by Law ought
to be taken for
waiting.

That all Sher-
iffs, Gaolers,
&c. shall per-
mit their Pri-
soners to send
for necessary
Food where
they please;

nor demand any
greater Fee for
their Commit-
ment or Dis-
charge than
what is allow-
able.

'mitted to the Custody of Sheriffs, Bailiffs, Gaolers, Keep-
'ers of Prisons or Gaols, are much abused and wronged
'by extorting of great Fees, Rewards, and other Exactions,
'and put to great Expences under Pretences of Favour or
'otherwise, whereby they are greatly oppressed, and many
'Times ruined in their Estates: For Remedy thereof, be it
enacted by the Authority aforesaid, That if any Under Sheriff,
Bailiff, Sergeant at Mace, or other Officer or Minister what-
soever, shall at any Time or Times hereafter have in his or
their Custody any Person or Persons by virtue or colour of
any Writ, Process, or other Warrant whatsoever, it shall not
be lawful for such Officer or Officers to convey or carry,
or cause to be conveyed or carried, the said Person or Persons
to any Tavern, Alehouse, or other public Victualling or Drink-
ing House, without the free and voluntary Consent of the
said Person or Persons, so as to charge such Prisoner with any
Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco,
or any other Things whatsoever, but what the said Person or
Persons shall call for of his, her, or their own Accord; and
shall not demand, take or receive, or cause to be demanded,
taken, or received, directly or indirectly, any other or greater
Sum or Sums than what by Law ought to be taken or demand-
ed for such Arrest, Taking, or Waiting; (until such Person
or Persons shall have procured an Appearance, found Bail,
agreed with his or their Adversaries, or be sent to the proper
Gaol belonging to the County, City, Town, or Place, where
such Arrest or Taking shall be) nor take and exact any other
Reward or Gratuity for so keeping the said Person or Persons
out of the Gaol or Prison, than what he, she or they shall or
will of his, her, or their own Accord voluntarily and freely
give; nor take nor receive any other or greater Sum or Sums
for each Night's Lodging or other Expences, than what is
reasonable and fitting in such Cases, or shall be so adjudged
by the next Justice of the Peace or at the next Quarter Ses-
sions; and shall not cause or procure the said Person or
Persons to pay for any other Wine, Beer, Ale, Victuals,
Tobacco, or other Things, than what the said Person or
Persons shall voluntarily, particularly, and freely call for.

X. And that every Under Sheriff, Gaoler, Keeper of
Prison or Gaol, and every Person or Persons whatsoever, to
whose Custody any Person or Persons shall be delivered
or committed by virtue of any Writ or Process, or any Pre-
tences whatsoever, shall permit and suffer the said Person
or Persons at his and their Will and Pleasure, to send for and
have any Beer, Ale, Victuals, and other necessary Food,
where and from whence they please, as also to have and use
such Bedding, Linnen, and other Things, as the said Person
or Persons shall think fit, without any purlinning, detaining or
paying for the same or any Part thereof; nor shall demand,
take or receive of the said Person or Persons any other or
greater Fee or Fees whatsoever, for his, her or their Commit-
ment, Release or Discharge, or for his, her or their Chamber-

rent, than what is allowable by Law, until the same shall be settled by three Justices of the Peace, whereof one to be of the *Quorum*, of each particular County, City and Town Corporate in their several Precincts; and for the City of *London* and Counties of *Middlesex* and *Surrey*, the two Lord Chief Justices of the King's Bench and Common Pleas, and the Lord Chief Baron, or any two of them, and the Justices of the Peace of the same in their several Jurisdictions.

No. 14.
22 & 23 Charles
II. c. 20.

XI. And likewise that the said Lord Chief Justices, Lord Chief Baron, and Justices of the Peace in their several Jurisdictions, and all Commissioners for Charitable Uses, do use their best Endeavours and Diligence to examine and find out the several Legacies, Gifts and Bequests bestowed and given for the Benefit and Advantage of the poor Prisoners for Debt, in the several Gaols and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings and Books of Accounts whatsoever, and any Person or Persons concerned therein, and to examine them upon Oath, to make true Discovery thereof (which they have full Power and Authority hereby to do), and the same so found out and ascertained, to order and settle in some Manner and Way, that the Prisoners hereafter may not be defrauded, but receive the full Benefit thereof, according to the true Intent of the Donors.

That Inquiry be made into all Charities given for the Benefit of poor Prisoners.

XII. And that these Accounts of the several Legacies, Gifts and Bequests given and bestowed upon the several Prisoners for Debt within this Kingdom, and the several Rates of Fees and the future Government of Prisons, be signed and confirmed by the Lord Chief Justices and Lord Chief Baron, or any two of them for the Time being, and the Justices of the Peace in *London*, *Middlesex*, and *Surrey*, and by the Judges for the several Circuits, and Justices of the Peace for the Time being in their several Precincts, and fairly written and hung up in a Table in every Gaol and Prison, before the first Day of *November*, one thousand six hundred seventy and one, and likewise be registered by each and every Clerk of the Peace within his or their particular Jurisdiction. And after such Establishment no other or greater Fee or Fees than shall be so established, shall be demanded or received.

That the Rates of Fees, and Government of Prisons be signed by the Lord Chief Justices, &c. and hung up in every Gaol, fairly written.

XIII. And whereas it is become the common Practice of the Gaolers and Keepers of Prisons, the Gaol-house at *Westminster*, and sundry other Gaols and Prisons, to lodge together in one Room or Chamber and Bed, Prisoners for Debt and Felons, whereby many Times honest Gentlemen, Tradesmen and others, Prisoners for Debt, are disturbed and hindered in the Night-time from their natural Rest, by reason of their Fetters and Irons, and otherwise much offended and troubled by their lewd and prophane Language and Discourses, with most horrid Cursing and Swearing, (much accustomed to such Persons); be it enacted by the Authority aforesaid, that it shall not be lawful hereafter for any Sheriff, Gaoler, or Keeper of any Gaol or Prison, to put, keep, or lodge Prisoners for Debt and Felons together in one Room or Chamber;

Felons and Prisoners for Debt, not to be lodged together.

No. 14. but that they shall be put, kept and lodged separate and apart from one another, in distinct Rooms; upon Pain that he, she or they which shall offend against this Act, or the true Intent and Meaning thereof, or any Part thereof, shall forfeit and lose his or her Office, Place or Employment, and shall forfeit Treble Damages to the Party grieved, to be recovered by virtue of this Act; any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding. 30 Car. 2.

22 & 23 Charles II. c. 20.

The Forfeiture for offending against this Act.

No. 15.

B. 29 Charles II. c. 7. — An Act for the better Observation of the Lord's Day, commonly called *Sunday*.

[See the Statute at Length, Pt VI Title *Lord's Day*]

No. 15.
20 Charles II.
c. 7.
Service of Process on the Lord's Day shall be void.

VI. PROVIDED also, that no Person or Persons upon the Lord's Day shall serve or execute, or cause to be served or executed, any Writ, Process, Warrant, Order, Judgment or Decree, (except in Cases of Treason, Felony or Breach of the Peace) but that the Service of every such Writ, Process, Warrant, Order, Judgment or Decree shall be void to all Intents and Purposes whatsoever; and the Person or Persons so serving or executing the same, shall be as liable to the Suit of the Party grieved, and to answer Damages to him for doing thereof, as if he or they had done the same without any Writ, Process, Warrant, Order, Judgment, or Decree at all. (1.)

(1.) The following Note upon this Subject was subjoined by the Editor to the Case of *Wilson v. Tucker*, 1 Salk. 78, in the sixth Edition of that Work — The Addition in Brackets contains the Cases since decided :

"Before the Statute, ministerial Acts upon a Sunday were lawful, 9 Co. 680; 2 Cro. 280; 2 Bul. 72. A Defendant arrested on another Day and escaping, may be retaken on a Sunday; Mod. Ca. 231. So a Person may be taken on an Escape Warrant; *Parker v. Moor*, 2 Salk. 626; but not after a voluntary Escape; *Featherstonhaugh v. Atkinson*, Barn. 373: nor a Person arrested and liberated, their being, at the Time of the Liberation, a Detainer at the Suit of another Person; *Atkinson v. Jameson*, 5 T. R. 25. Bail may seize their Prisoners; Mod. Ca. 231: but not Sheriff's Bail, *Brookes v. Warren*, 2 Bl. Rep. 1272. A Person may be arrested on a Sunday on the Lord Chancellor's Warrant, or an Order of Commitment for a Contempt; 1 Ark. 55, not upon an Attachment for Nonperformance of an Award; Dut. 1 T. R. 265. A Person convicted by Justices on a penal Statute, cannot be apprehended on a Sunday for Writ of Distress; *Rex v. Myers*, 1 T. R. 265. [A Rule Nisi, for an Attachment for Nonpayment of Money, cannot be served on a Sunday; *McClellan v. Smith*, 5 T. R. 86. Service of Notice of Plea, filed on a Sunday, is void; *Roberts v. Makhouse*, 8 East. 547. A Writ returnable on a Sunday, must be executed, at latest, on the Saturday; *Leveridge v. Plawton*, 2 H. B. 29. The Service of any Process on Sunday is absolutely void, and cannot be made good by any subsequent Waiver. *Taylor v. Phillips*, 2 H. B. 155.]

No. 16.

4 William and Mary, c. 4. — An Act for taking Special Bails in the Country upon Actions and Suits depending in the Courts of *King's Bench*, *Common Pleas*, and *Exchequer*, at *Westminster*.

FOR the greater Ease and Benefit of all Persons whatsoever, in taking the Recognizances of Special Bails upon all Actions and Suits depending, or to be depending, in any of the Courts of *King's Bench*, *Common Pleas*, or *Exchequer* at *Westminster*; be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Chief Justice, and other the Justices of the Court of *King's Bench* for the Time being, or any two of them, whereof the Chief Justice for the Time being to be one for the said Court of *King's Bench*, and the Chief Justice of the Court of *Common Pleas*, and other the Justices there for the Time being, or any two of them, whereof the Chief Justice of the same Court to be one for the said Court of *Common Pleas*, and also the Chief Baron and Barons of the Quill of the Court of the *Exchequer* for the Time being, or any two of them, whereof the Chief Baron for the Time being to be one for the said Court of *Exchequer*, shall or may, by one or more Commission or Commissions under the several Seals of the said respective Courts, from Time to Time, as Need shall require, empower such, and to many Persons, other than common Attornies and Solicitors, as they shall think fit and necessary, in all and every the several Shires and Counties within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tyne*, to take and receive all and every such Recognizance or Recognizances of Bail or Bails, as any Person or Persons shall be willing or desirous to acknowledge or make before any of the Persons so empowered, in any Action or Suit depending or hereafter to be depending in the said respective Courts, or any of them, in such Manner and Form, and by such Recognizance or Bail-piece, as the Justices and Barons of the said respective Courts have used to take the same, which said Recognizance or Recognizances, or Bail or Bail-piece so taken as aforesaid, shall be transmitted to some or one of the Justices or Barons of the said respective Courts where such Action or Suit shall be depending, who, upon Affidavit made of the due Taking of the Recognizance of such Bail or Bail-piece by some credible Person present at the taking thereof, such Justice or Baron shall receive the same, upon Payment of such Fees as have been usually received for the taking of special Bails by the Justices and Barons Clerks, and other the Officers of the said respective Courts; which Recognizance of Bail or Bail-piece, so taken and transmitted, shall be of the like Effect as if

No. 16.
4 William and Mary, c. 4.

Chief Justice, &c. may make any Persons, except Attornies and Solicitors, Commissioners to take Bail in the Country.

Justices, &c. to receive the Bail-piece upon Affidavit of due Execution.

No. 16.
4 William and
Mary, c. 4.
Bail taken be-
low to be as *de*
bene esse.

Power given to
Justices, &c. to
make Rules for
justifying, but
not to order the
Person's Ap-
pearance.

London, &c.
saved.

Justices of As-
sise may take
Bail.

Felony for any
Person to be
Bail in another
Man's Name.

the same were taken *de bene esse* before any of the said Justices and Barons, for the taking of every which Recognizance or Recognizances of Bail or Bail-piece, the Person or Persons so impowered shall receive only the Sum or Fee of two Shillings, and no more.

II. And be it further enacted by the Authority aforesaid, That the Justices and Barons respectively in the several Courts shall make such Rules and Orders for the justifying of such Bails, and making of the same absolute, as to them shall seem meet, so as the Cognizor or Cognizors of such Bail or Bails be not compelled to appear in Person in any of the said Courts, to justify him or themselves, but the same may and is hereby directed to be determined by Affidavit or Affidavits duly taken before the said Commissioners, who are hereby impowered and required to take the same, and also to examine the Sureties upon Oath, touching the Value of their respective Estates, unless the Cognizor or Cognizors of such Bail do live within the Cities of *London* and *Westminster*, or within ten Miles thereof.

III. And be it further enacted by the Authority aforesaid, That any Judge of Assise in his Circuit shall and may take and receive all and every such Recognizance and Recognizances of Bail or Bails as any Person shall be willing and desirous to make and acknowledge before him, which being transmitted in like Manner as aforesaid, shall (without Oath) be received in Manner aforesaid, upon Payment of the usual Fees.

IV. And be it further enacted by the Authority aforesaid, That any Person or Persons who shall before any Person or Persons impowered by virtue of this Act, as aforesaid, to take Bail or Bails represent or personate any other Person or Persons, whereby the Person or Persons so represented and personated may be liable to the Payment of any Sum or Sums of Money for Debt or Damages to be recovered in the same Suit or Action, wherein such Person or Persons are represented and personated, as if they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed and taken to be Felons, and suffer the Pains of Death, and incur such Forfeitures and Penalties as Felons in other Cases convicted or attainted do by the Law of *England* lose and forfeit.

No. 17.

8 and 9 William III. c. 27.—An Act for the more effectual Relief of Creditors in Cases of Escapes, and for preventing Abuses in Prisons and pretended privileged Places.

No 17.
8 & 9 William
III. c. 27.

WHEREAS by reason of the many grievous Extortions and ill Practises of such Persons who have for several Years past respectively executed the Offices of Marshal of the King's Bench, Warden of the Fleet, and Keeper of the Marshals

'*sea, Newgate, and other Prisons, and by several pretended privileged Places within this Realm, both Creditors and Debtors have been notoriously abused, and the good Intents of the Law wholly eluded:*' For Reformation thereof, be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the First Day of *May*, one thousand six hundred ninety-seven, all Prisoners, either upon Contempt or Mesne Process, or in Execution, who are or shall be committed to the Custody of the Marshal of the King's Bench Prison, or Warden of the Fleet, shall be actually detained within the said Prisons of the King's Bench and Fleet, or the respective Rules of the same, until they shall be from thence discharged by due Course of Law; and if at any Time from and after the said First Day of *May*, the said Marshal or Warden, or any other Keeper or Keepers of any Prison, shall permit and suffer any Prisoner committed to their Custody, either on Mesne Process or in Execution, to go or be at large but of the Rules of their respective Prisons, (except by virtue of some Writ of *Habeas Corpus* or Rule of Court, which Rule of Court shall not be granted but by Motion made or Petition read in the Court), every such going or being out of the said Rules shall be adjudged and deemed, and is hereby declared to be an Escape.

No 17.
8 & 9 William
III c. 27.

Prisoners in
the King's
Bench or Fleet
to be detained
there or in the
Rules, &c.

For the Min^r
see 9 Geo. I
c. 28.

II. And be it further enacted by the Authority aforesaid, that from and after the said First Day of *May*, every Person or Persons obtaining Judgment in any Action of Escape against the said Marshal or Warden, or their respective lawful Deputy or Deputies, shall and may have, not only the several Remedies already by Law allowed for obtaining Satisfaction thereon, but the Judges of the respective Courts where such Judgment shall be obtained (upon Oath before them made by the Person or Persons obtaining such Judgment, that the same was obtained without Fraud or Covin, and that the Debt of the Prisoner making such Escape was a true and real Debt and unsatisfied) shall, upon Motion made to them in open Court for that Purpose, sequester the Fees and Profits of the Office of Marshal or Warden, of so much, or such Part or Proportion thereof, as the said Court wherein such Motion shall be made shall think fit and reasonable, with respect to the Debt or Debts due from such Prisoner or Prisoners so escaping, and in the first Place apply the same towards Satisfaction of the Debt or Debts due from the Prisoner or Prisoners who escaped, together with all Costs and Damages recovered in such Action of Escape.

Upon Judgment
in Action of Es-
cape, Marshal
or Warden's
Fees to be se-
questered for
Satisfaction.

III. And, to the End that such Satisfaction may not be de-
served by any Writ of Error brought for Delay only, be it en-
acted, That if the said Marshal or Warden, or their respective
Deputy or Deputies, shall at any Time after the said First Day
of *May* use forth any Writ or Writs of Error to reverse any
Judgment given in any Action of Escape, such Marshal or
Warden, or their respective Deputy or Deputies, shall be

Marshal, &c.
quing a Writ of
Error to reverse
Judgement, to
put in special
Bail

No 17. obliged to put in special Bail, or in default thereof no Execution shall be stayed, nor any Sequestration of the Profits delayed.
 8 & 9 William III. c. 27.

Penalty on the Marshal, &c. taking any Reward to connive at Prisoner's Escape.

IV. And whereas it is notorious that divers great Sums of Money and other Rewards have been given to, and actually received by, the several Persons executing the respective Offices of Marshal and Warden, and other Keepers of the several Prisons within this Kingdom, to assist or permit Prisoners in their Custody to escape, in open Defiance and Contempt of the Laws of this Realm: For preventing the like evil Practice for the Time to come, Be it further enacted, That if any Marshal or Warden, or their respective Deputy or Deputies, or any Keeper of any other Prison within this Kingdom, shall take any Sum of Money, Reward, or Gratuity whatsoever, or Security for the same, to procure, assist, connive at, or permit any such Escape, and shall be thereof lawfully convicted, the said Marshal or Warden, or their respective Deputy or Deputies, or such other Keeper of any Prisons as aforesaid, shall for every such Offence forfeit the Sum of five hundred Pounds, and his said Office, and be for ever after incapable of executing any such Office.

This Act not to void Securities given for Lodging within the Rules of the said Prisons.

V. Provided always, That this Act, nor any Thing therein contained, shall extend, or be construed to extend to make void such Securities, or any of them, as shall at any Time or Times hereafter be given by any Prisoner or Prisoners for his or their Lodging or Lodgings without the aforesaid Prisons, or either of them, within the Rules of the said Prisons of *King's Bench* and *Fleet*, or either of them, to as such Security or Securities be not taken for the Enlargement of any Prisoner or Prisoners out of or beyond the Rules of the said Prisons of *King's Bench* and *Fleet*, or either of them respectively.

No retaking on fresh Pursuit to be given in Evidence on Action of Escape, unless specially pleaded, &c.

VI. And be it further enacted by the Authority aforesaid, That from and after the said first Day of May, no retaking on fresh Pursuit shall be given in Evidence on the Trial of any Issue in any Action of Escape against the said Marshal or Warden, or their respective Deputy or Deputies, or against any other Keeper or Keepers of any other Prison or Prisons as aforesaid, unless the same be specially pleaded, nor shall any special Plea be taken, received, or allowed, unless Oath be first made in Writing by the Marshal or Warden, or their respective Deputy or Deputies, or by such other Keeper or Keepers of any other Prison or Prisons as aforesaid, against whom such Action shall be brought, and filed in the proper Office of the respective Courts, That the Prisoner for whose Escape such Action is brought did without his Consent, Privy, or Knowledge make such Escape; and if such Affidavit shall at any Time afterwards appear to be false, and the Marshal or Warden, or other Keeper or Keepers of any other Prison or Prisons, shall be convicted thereof by due Course of Law, such Marshal or Warden, or other Keeper or Keepers of any other Prison or Prisons, shall forfeit the Sum of five hundred Pounds.

VII. And be it further enacted and declared by the Authority aforesaid, That if at any Time after the said first Day of May, any Prisoner who is or shall be committed in Execution to either or any of the said respective Prisons, shall escape from thence by any Ways or Means howsoever, the Creditor or Creditors, at whose Suit such Prisoner was charged in Execution at the Time of his Escape, shall or may retake such Prisoner by any new *Capias*, or *Capias ad satisfaciendum*, or use forth any other Kind of Execution on the Judgement, as if the Body of such Prisoner had never been taken in Execution.

VIII. And be it further enacted by the Authority aforesaid, That if the said Marshal or Warden for the Time being, or their respective Deputy or Deputies, or other Keeper or Keepers of any other Prison or Prisons, shall, after one Day's Notice in Writing given for that Purpose, refuse to shew any Prisoner committed in Execution to the Creditor at whose Suit such Prisoner was committed or charged, or to his Attorney, every such Refusal shall be adjudged to be an Escape in Law.

IX. And be it further enacted by the Authority aforesaid, That if any Person or Persons whatsoever, desisting to charge any Person with any Action or Execution, shall desire to be informed by the said Marshal or Warden, or their respective Deputy or Deputies, or by any other Keeper or Keepers of any other Prison or Prisons, whether such Person be a Prisoner in his Custody or not, the said Marshal or Warden, or such other Keeper or Keepers of any other Prison or Prisons, shall give a true Note in Writing thereof to the Person so requesting the same, or to his lawful Attorney upon Demand at his Office for that Purpose, or in Default thereof shall forfeit the Sum of fifty Pounds; (1.) and if such Marshal or Warden, or their respective Deputy or Deputies exercising the said Office, or other Keeper or Keepers of any other Prison or Prisons, shall give a Note in Writing that such Person is an actual Prisoner in his or their Custody, every such Note shall be accepted and taken as a sufficient Evidence that such Person was at that Time a Prisoner in actual Custody.

X. [Conveyances of the King's Bench and Fleet Prisons, &c. to be enrolled.]

XI. [Office of Warden and Keeper of the King's Bench and Fleet to be executed by those who were the Intendants of the said Prisons, or their Deputies, &c.]

XII. By Stat. 27 George II. c. 17. the Marshal of the King's Bench is to be appointed by the Crown.

XIII. And whereas the Warden of the Fleet Prison has Bill in the Court of Common Pleas and Exchequer against the King, for the sum of £1000, and also the said first Day of May, it shall and may be lawful to and for any Person or Persons, having Cause of Action against the Warden of the Fleet Prison, upon Bill filed in the said Court of Common Pleas or Exchequer against the

No. 17.

2 & 9 William III. c. 27.

Prisoner in Execution escaping, may be retaken by any new *Capias*.

Keepers refusing to shew Prisoner, it shall be an Escape.

Penalty on Marshal, &c. refusing to give a Note whether a Person be Prisoner, or not.

On Bill filed against the Warden, &c. Judgment to be given, unless stayed by the Court.

(1.) The Penalty shall only be recovered by Action, and not in a summary Way. Woodcock v. Elpington, 1 Str. 60.

No 17
8 & 9 William
III c 27.

Copy of Decla-
ration delivered
to Prisoner, &c
wth Affidavit
made thereof,
Plaintiff to sign
Judgment.

said Warden, and a Rule being given to be out eight Days at most after filing such bill, to sign Judgement against the said Warden of the Fleet, unless he plead to the said bill within three Days after such Rule is out.

XIII. And, for the more easy and quick obtaining of Judgement against any Person or Persons who now is or hereafter shall be a Prisoner or Prisoners in the aforesaid Prison of the Fleet, be it further enacted by the Authority aforesaid, That, from and after the said first Day of May, it shall and may be lawful to and for any Person or Persons, who hath or shall have any Cause of Action against any Prisoner or Prisoners, who now is or are, or hereafter shall be committed to the said Prison of the Fleet, after filing or entring of a Declaration in such Action with the proper Officer, to deliver a Copy of such Declaration or Declarations to any such Defendant or Defendants in any personal Action or Actions, or to the Turnkey or Porter of the said Fleet Prison, and, after Rule given thereupon to plead, to be out at Eight Days at most after Delivery of such Copy of Declaration or Declarations, and Affidavit made of such Delivery before the Lord Chief Justice, or one other of the Justices of the Common Pleas, or before the Lord Chief Baron, or some other of the Barons of the Court of the Exchequer at Westminster, of the Delivery of such Declaration or Declarations to the Defendant or Defendants in such Action or Actions, or to the Turnkey or Porter of the said Fleet Prison, as aforesaid, to sign Judgement in such Action or Actions against such Defendant or Defendants, as if such Defendant or Defendants had been actually charged at the Bar of the Common Pleas or Exchequer with such Action or Actions; any Law, Statute, Usage, or Custom to the contrary thereof in any wise notwithstanding.

No Prisoner to
pay Chamber
Rent longer
than while in
actual Posses-
sion, nor pay
above 2s. 6d.
per Week.

XIV. And whereas great Sums of Money have been and are still taken of the Prisoners of the aforesaid Prisons of King's Bench and Fleet, and other Prisons, under Pretence of Chamber Rent, although the said Prisoners have not had the actual Possession of any Chamber within the said Prisons, or any of them: For the avoiding of that Inconvenience for the future be it enacted, That from and after the said first Day of May, no Prisoner or Prisoners shall pay, or be compellable to pay any Chamber Rent for any Chamber within either or any of the said Prisons, for any longer Time than he or they is or are actually in Possession of the said Chamber or Chambers, and that during such Time as he or they is or are actually in Possession of any such Chamber or Chambers within either or any of the said Prisons as aforesaid, such Prisoner or Prisoners shall not pay above the Sum of two Shillings and six Pence per Week for any such Chamber; and if the Marshal of the King's Bench Prison, Warden of the Fleet, or Keeper or Keepers of any other Prison or Prisons, as aforesaid, shall take or demand any greater Sum or Sums of Money for the Use of such Chamber, than the Sum of two Shillings and six Pence per Week, he or they so taking or demanding shall in such Case, for every such Offence, forfeit the Sum of twenty Pounds.

‘XV. And for the preventing for the future the many
 ‘notorious and scandalous Practices used in many pretended
 ‘privileged Places in and about the Cities of *London and West-*
 ‘*minster*, and the Borough of *Southwark* in the County of
 ‘*Surrey*, by obstructing the Execution of legal Process there,
 ‘and thereby defrauding and cheating great Numbers of Peo-
 ‘ple of their honest and just Debts:’ Be it further enacted by the
 Authority aforesaid, That from and after the said first Day of
 May, it shall and may be lawful for any Person or Persons,
 who have or hath any Debt or Debts, Sum or Sums of Money
 due or owing to him from any Person or Persons who now is,
 or hereafter shall be and reside within the *White Friars, Savoy, Pretended Pri-*
Salisbury Court, Ram Alley, Mitre Court, Fuller’s Rents, Bald-
win’s Gardens, Montague Close, or the Minories, Mint, Clerk,
 or *Deadman’s Place*, upon legal Process taken out against such
 Person or Persons to demand and require the Sheriffs of *London*
 and *Middlesex*, Head Bailiff of the Liberty of the Duchy of
Lancaster, or High Sheriff of the County of *Surrey*, or Bailiff
 of the Liberty of the Borough of *Southwark* for the Time
 being (as the Case shall require, if the Plaintiff think it requi-
 site) or their respective Deputy or Deputies, Officer or Officers,
 to take, and they are hereby enabled respectively to take the
Posses Comitatus, or such other Power as to him or them or any
 of them shall seem requisite, and enter the said pretended
 privileged Places, and any or either of them (as the Case shall
 require) and to arrest, and in Case of Resistance or Refusal to
 open the Doors, to break open any Door or Doors to arrest
 such Person or Persons upon any Mesne or other Process,
 Extent or Execution, or to seize the Goods of any such Person
 or Persons upon any Execution or Extent; and if the said
 Sheriff or Sheriffs, Head Bailiff, or their Deputy or Deputies,
 Officer or Officers, or either or any of them, shall neglect or
 refuse (upon such Request) with such Force to do their best
 Endeavours for the executing of such Process, Execution or
 Extent, he or they so neglecting or refusing to execute such
 Process, Execution or Extent, shall forfeit to the Plaintiff or
 Plaintiffs in such Action the Sum of one hundred Pounds, to
 be recovered by Action of Debt, Bill, Plaint, or Information,
 in which no Escoin, Protection or Wager of Law, or more
 than one Imparlance shall be allowed; and if in the executing
 of such Process, Execution or Extent, any Person or Persons
 shall oppose or resist any such Officer or Officers, or any of
 them, or any who shall be aiding or assisting to him, them,
 or any of them, in the executing of such Process, Execution
 or Extent, he or they so offending shall, for every Time he or
 they shall so offend, forfeit the Sum of fifty Pounds, and
 moreover shall be by some Justice of Peace committed to the
 common Gaol of such County, City or Place where such
 Offence shall be committed, there to remain without Bail
 or Mainprize until the next Assizes, Sessions of Oyer and Ter-
 miner, and General Gaol Delivery, to be held for such
 County, City or Place; and such Offender or Offenders being

No. 17.

8 & 9 William
III. c. 27.Pretended Pri-
vileged Places.Sheriffs, &c.
may take Posses
Comitat’ and
arrest in the
said privileged
Places, on Pro-
cess, Extent, or
Execution.Penalty on
Sheriff, &c.
neglecting, &c.

No. 17.
8 & 9 William
III. c. 27.

Penalty for res-
cuing a Prison-
er

Person har-
bouring or con-
cealing Rescuer,
to be transport-
ed for Seven
Years, unless
he pay the Debt
and Costs.

of such Offence or Offences duly convicted, every such Offender shall suffer and undergo such Imprisonment, and be set in the Pillory, as the Court where such Conviction shall be shall think fit; and if any Rescous shall be made of any Prisoner taken by any such Officer or Officers as aforesaid, upon any such Process, Execution or Extent, within the Limits of any the before-mentioned pretended privileged Places, by any Person or Persons whatsoever, such Person or Persons so making such Rescous, or aiding, assisting or abetting the same, and being thereof lawfully convicted, shall respectively forfeit to the Plaintiff in any such Action the Sum of Five Hundred Pounds, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts at Westminster, in which Action, Bill, Plaint or Information, no Escoin, Privilege, Protection, Wager of Law, or more than one Imparlance shall be allowed; and if after such Recovery had against any Person or Persons for such Rescous, or for aiding, assisting, or abetting the same, the Person or Persons against whom such Recovery shall be had, shall refuse or neglect to pay to the Plaintiff in such Action, or to his, her, or their Executors, Administrators, or Assigns, the Sum or Sums recovered, with full Costs of Suit, within one Month after Judgement signed upon such Recovery, and Demand made, that then the Person or Persons so refusing or neglecting as aforesaid, upon producing a Copy of the Judgement upon which such Recovery shall be had, and Oath made that the Money recovered is not paid, shall, by order of such Court wherein the said Person or Persons was or were so convicted, of or for any such Rescous, or for aiding, assisting or abetting the same, be transported by the Sheriff or Sheriffs of the County, City or Place where such Conviction shall happen to be, to one of his Majesty's Plantations beyond the Seas, there to remain for the Space of seven Years; and if the Person or Persons so transported, shall return again to this Kingdom within the Space of seven Years, he, she or they so returning, shall be and is hereby adjudged guilty of Felony, and shall not be allowed the Benefit of Clergy, but shall suffer and forfeit as in Cases of Felony where Clergy is not allowed; and if any Person or Persons, inhabiting within either or any of the aforesaid pretended privileged Places, shall receive, conceal or harbour any Person or Persons, who shall have made any Rescous as aforesaid, he, she or they so receiving, concealing or harbouring any such Person or Persons, knowing or having had Notice that such Person or Persons had been guilty of such Offence, being thereof convicted by the Course of Law, shall be by Order of that Court where such Conviction shall happen to be, by the Sheriff or Sheriffs of the County, City or Place where the Offence was committed, transported to some or one of his Majesty's Plantations beyond the Seas, there to remain for the Space of seven Years, unless such Person or Persons shall, within the Space of one Month next after such Conviction; pay to the Plaintiff or Plaintiffs in such Action or Suit, the

full Debt or Duty for which such Action or Suit was brought, with full Costs; and if he, she or they shall return into this Kingdom within the said Space of seven Years, he, she or they so returning, shall be and is hereby adjudged guilty of Felony, and shall not be allowed the Benefit of Clergy, but shall suffer and forfeit as in Cases of Felony where Clergy is not allowed.

No. 17.
8 & 9 William
III c 27.

XVI. And be it further enacted, That the several Penalties before in and by this Act inflicted, and not particularly disposed of, shall go One Half to his Majesty, His Heirs and Successors, and the other Half to him or them that will sue for the same, to be recovered as aforesaid.

Penalties how
to be disposed
of

XVII. And for the Prevention of Disputes touching this Act, be it enacted by the Authority aforesaid, that the same, and every Clause and Thing therein contained, shall be deemed, adjudged, and taken to be a general Law, and that it shall not be needful to shew or set forth the same or any Clause thereof in Pleading, and that the same, and all Clauses therein, shall be construed most largely and beneficially for the preventing of all the Mischiefs, Abuses, Escapes, and other Inconveniences herein provided against; and further, that if any Person or Persons shall at any Time be sued for putting in Execution any Power or Authority given by this Act, such Person and Persons shall and may plead the General Issue, and give in Evidence this Act, and the special Matter; and if the Plaintiff or Plaintiffs in such Action shall be nonsuit, or a Verdict given for the Defendant or Defendants, or if the Plaintiff or Plaintiffs discontinue their Action, or if upon Demurrer Judgement shall be given for the Defendant or Defendants, every such Defendant or Defendants shall have his or their Double Costs.

This Act to be
a general Law.

General Issue.

Double Costs

XVIII [Right of Martha Johnson, &c. saved.]

XIX [This Act not to prejudice the Securities made by William Lenthall Esq to Sir John Cutler, &c.]

XX [Right of Anthony Smith saved.]

XXI [Right of Thomas Norwood not to be prejudiced, &c.]

XXII [Deputations granted by William Lenthall made void, &c.]

No. 18.

11 & 12 William III. c. 9. — An Act for preventing of frivolous and vexatious Suits in the Principality of Wales, and the Counties Palatine.

B.

II. **A**ND whereas the holding of Persons inhabiting within the said Principality of Wales, and Counties Palatine, to special Bail in small Actions, is oppressive and vexatious to the Subject: For Remedy whereof, Be it further enacted by the Authority aforesaid, That no Sheriff or other Officer within the said Principality or Counties Palatine, upon any Writ or Process issuing out of any of his Majesty's Courts of Record at Westminster, shall hold any Person to special Bail, unless an Affidavit be first made in Writing, and

No. 18.
11 & 12 William
III c 9

No Sheriff, &c.
in Wales, &c.
shall hold Per-
sons to special
Bail,

No. 18. fitted in that Court, out of which such Writ or Process is to
 11 & 12 William III. c. 9. issue, signifying the Cause of Action, and that the same is
 unless Cause of Action be 20l. is twenty Pounds (1.) and upward, Bail shall not be taken for
 more than the Sum expressed in such Affidavit.

(1.) This is not repealed by the general Provisions of Stat. 12 George I. c. 29, against holding to Bail for less than £10; Smith & Dudley, 2 Str. 1102; Lord Molineux & Charles, Barnes 69; Rayner v. Brough, Barnes 69.

No. 19.

1 Anne, stat. 2. c. 6. — An Act for the better preventing of Escapes out of the *Queen's Bench* and *Fleet* Prisons.

No. 19.
 1 Anne, stat. 2.
 c. 6.

Prisoner in the
 Queen's Bench
 or Fleet Prison,

‘WHEREAS divers Persons heretofore legally committed by her Majesty's several Courts of Record at Westminster, to the Custody of the Marshal of the *Queen's Bench*, and to the Prison of the *Fleet*, upon Actions for the Recovery of Debt, or Damages, or for Contempts in not performing Orders or Decrees made in Courts of Equity, and in Execution, have by Bribes and illegal Practices, to and with such Marshal of the *Queen's Bench*, or to and with the Warden of the said Prison of the said *Fleet*, or some of their Officers or Servants, or other Persons in Trust for them, and for their respective Uses and Benefit, frequently procured from such Marshal or Warden Liberty to escape, and go at large without Satisfaction made to the respective Plaintiffs or Creditors, and without discharging such Debts, or satisfying such Damages, or performing such Orders or Decrees, as well to the great Damage of honest Creditors, the Decrease of personal Credit, and Discouragement of Trade, as in open Defiance to all good and wholesome Laws heretofore made to remain such Abuses: For Remedy whereof, and for preventing the like evil Practices for the future, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons already committed, arrested, or charged, or who shall hereafter be committed, or charged to, or charged in the Custody of the Marshal of the *Queen's Bench*, or the Time being, or to or in the Prison of the *Fleet*, either in Execution, or upon *Magna Process*, or upon any Complaint in not performing such Order or Decree by any of her Majesty's Courts at Westminster, and such Person or Persons shall at any Time after such Commitment, Sender, Charge, or being in Execution, and before he, or they shall have made Payment or Satisfaction to the respective Plaintiff or Plaintiffs, Creditor or Creditors, or shall have cleared him, her, or themselves of such Contempts, as he, she, or they were, or shall be charged with at the Time of such their Commitment, Reader, Charge,

or being in Execution as aforesaid, make any Escape from the Custody of the Marshal of the *Queen's Bench* for the Time being, or from the Prison of the said *Queen's Bench*, or from the Prison of the *Fleet*, or either of them, or shall go at large, at any Time after the three and twentieth Day of *January*, which shall be in the Year of our Lord one thousand seven hundred and two, it shall and may be lawful upon Oath thereof in Writing, to be made by one or more credible Person or Persons, before any one of the Judges of that Court where such Action was entered, or Judgment and Execution were obtained, or where the Party was so committed or charged as aforesaid, to and for such Judge, before whom such Oath shall be made as aforesaid, and such Judge is hereby authorized and required, from Time to Time, to grant unto any Person whatsoever, who shall demand the same, one or more Warrant or Warrants under his Hand and Seal, therein reciting the Action or Actions, Execution or Executions, Contempt or Contempts, with which such Person or Persons so escaping, or going at large, stood charged, or were committed at the Suit of any Person or Persons, on whose Behalf such Warrant or Warrants shall be demanded at the Time of such Escape, or going at large (which said Warrant or Warrants shall be in Force in all Places whatsoever, within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*), directed to all Sheriffs, Mayors, Bailiffs, Constables, Headboroughs, and Tythingmen, therein and thereby commanding them, and every of them, in their respective Counties, Cities, Towns, and Precincts, to seize and retake (1.) such Person or Persons so escaped, or going at large; and such Person or Persons so re-taken upon such Warrant forthwith to convey and commit to the common Gaol of such County where such Person or Persons so escaped, or going at large, shall be re-taken, there to remain without Bail or Mainprize, or being thence, upon any Account whatsoever delivered or removed, until he, she, or they shall have made full Payment or Satisfaction to the respective Plaintiff or Plaintiffs, Creditor or Creditors, in such Action or Actions, Execution or Executions named, or until the Judgment or Judgments, on which such Execution or Executions was or were sued out against such Person or Persons, shall be reversed or discharged by due Course of Law, or until Judgment in such Action or Actions be given for such Person or Persons so committed as aforesaid, or until the said Contempt or Contempts, for which such Person or Persons were or shall be committed, be cleared and discharged; except such Person or Persons be charged with Treason or Felony, or any other Crime, Matter, or Cause, for and on the Behalf of the *Queen's Majesty*, her Heirs and Successors; and if he or she, for any such Cause, on the Behalf of the *Queen*, her Heirs and Successors, be removed to any other Gaol or Prison, he or she shall be, in the Custody of such

No. 19.
1 Anne, stat. 2.
c. 6

making Escape,
&c.

on Oath thereof
Judge may
grant Warrant
for re-taking
such Prisoner,

who shall be
committed to
the County
Gaol where
taken, there to
remain, &c.

* By 5 Anne,
c. 9, § 1 such
Person shall be
committed to
the Prison
which the Sher-
riff useth for
Debtors.

Exception.

(1.) The Warrant may be executed on a Sunday; *Sir Wm. Moore's Case*, 2 Lord Raym. 1028; 2 Salk. 626; and see the next Number, *sec. 1.*

No. 19.
1 Aine, stat. 2.
c. 6.

Mayor, &c.
after Delivery
of Prisoner,
shall take a
Receipt from
Sheriff:

Sheriff to
make Return of
Warrant, &c.

and answer for
Prisoner escap-
ing, after re-
taken

Prisoner's
Bail may have
a Writ to Sher-
riff to detain
Prisoner, &c.

Writ to be
returned into
Court, &c.

Sheriff, &c. af-
terwards suffer-
ing Prisoner to
escape, liable
to such Action,
&c. as Marshal
or Warden, &c.

Penalty on
Sheriff, &c.
neglecting to
make Return of
Writ.

Gaol, charged with all the Causes with which he or she is or shall be charged in the Gaol from whence he or she shall be removed: And every Mayor, and other Officer as aforesaid, after Delivery of such Prisoner so re-taken, together with such Warrant, to the Sheriff, shall take a Note in Writing from such Sheriff, testifying the Receipt of such Prisoner, which said Sheriff is hereby required to receive such Prisoner, and give such Note; and every such Sheriff as aforesaid, after the Execution of such Warrant, shall forthwith make a Return thereof to the Court where the Action shall be depending, or Judgment, Order, or Decree had or obtained; which shall be entered and filed upon Record.

II. And be it further enacted, that if any such Person or Persons so re-taken by Warrant as aforesaid, shall at any Time make any Escape out of the Gaol to which he, she, or they shall be so conveyed and committed as aforesaid, the Sheriff, in whose Custody he, she, or they was or were, shall be liable to answer for such Escape, as in the Case of any other Escape; any Law, Usage, or Custom to the contrary in any wise notwithstanding.

III. Provided always, and be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any Person or Persons, that are or shall be Bail in any Suit or Action in any of her Majesty's Courts of Record at Westminster, for any such Person or Persons that shall be re-taken and conveyed to such Gaols as aforesaid, by virtue of such Warrant as aforesaid, to have and prosecute out of such of her Majesty's Courts, where he or they are or shall be Bail, a Writ directed to the Sheriff of the County, to the Gaol whereof such Prisoner so re-taken shall be committed and detained, commanding such Sheriff to detain and keep such Prisoner in Custody in discharge of his Bail; which Writ, with an Account whether he hath the said Prisoner in his Custody, shall be returned by the said Sheriff into Court, at a Day therein to be mentioned, and the Delivery of every such Writ to the Sheriff, or his Deputy, shall be deemed and taken to be an effectual Render of such Prisoner, to all Intents and Purposes whatsoever, in discharge of the said Bail; and that in case such Sheriff, his Deputy, or other his inferior Officer, shall thereafter suffer the Person or Persons so rendered, in discharge of his, her, or their Bail, to escape, they and every of them so offending shall be liable to such Action and Actions, as the Marshal of the Queen's Bench, or Warden of the Fleet Prison, is or are liable to, for permitting any Person to escape out of his or their Custody or Prison, who was committed to such Custody or Prison upon Render, in discharge of his, her, or their Bail.

IV. And be it further enacted, That all and every such Sheriff, upon Request of such Person or Persons being Bail as aforesaid, who shall deliver such Writ for keeping and detaining such Prisoner as aforesaid, and for the usual Fees of Returns of Actions, shall make, return, and certify, under his Hand, the Receipt of such Writ, and the Time thereof, and

whether the said Person so re-taken was then in his Custody, and in Default thereof shall, for every such Default, Neglect, or Refusal, forfeit the Sum of fifty Pounds, to be recovered in any of her Majesty's Courts of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, Wager of Law, or any more than one Imparlance shall be allowed; and that upon producing such Return or Certificate to the Court where such Bail shall be taken, such Court shall direct and cause a *Redditi* to be entered upon the Bail-piece, which shall be as effectual to all Intents and Purposes, as if the said Bail had then actually rendered the Person of the said Defendant to such Court, or before any Judge or Judges of the same.

No. 19.
1 Anne, stat. 2.
c. 6.

Redditi se.

V. And for the Prevention of Disputes touching this Act, Be it enacted by the Authority aforesaid, That the same, and every Clause and Thing therein contained, shall be adjudged and taken to be a General Law, and that it shall not be needful to set forth the same in pleading, or any Part thereof; and that the same, and every Clause therein, shall be construed most beneficially for the preventing of all the Mischiefs, Abuses, Escapes, and other Inconveniencies herein provided against: And further, That if any Person or Persons shall, at any Time be sued for putting in Execution any Power or Authority given by this Act, such Person or Persons shall and may plead the General Issue; and give in Evidence the special Matter; and if the Plaintiff or Plaintiffs in such Action or Actions shall be nonsuit, or discontinue his, her, or their Action or Actions, or a Verdict shall be given for the Defendant or Defendants, or that Judgment upon Demurrer shall be given for the Defendant or Defendants, every such Defendant or Defendants shall have his or their treble Costs of Suit.

This Act to
be a General
Law.

General Issue.

Treble Costs.

No. 20.

5 Anne, c. 9.—An Act for rendering more effectual an Act passed in the first Year of her Majesty's Reign, intituled, "An Act for the better preventing Escapes out of the Queen's Bench and Fleet Prisons."

WHEREAS the Inheritance and Custody of several County Gaols are in private Persons, by Means whereof the good Intent of a certain Act made in the first Year of her Majesty's Reign, intituled, "An Act for the better preventing Escapes out of the Queen's Bench and Fleet Prisons," may be in some Counties defeated and eluded: To the End therefore that the said Act may be rendered more effectual: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Person and Persons, who from and after the five and twentieth

No. 20.
5 Anne, c. 9.
1 Anne, stat. 2.
c. 6.

Persons taken
by virtue of

No. 20.
5 Anne, c. 9.
1 Anne, c. 6.
to be committed
to Prison where
Sheriff keeps
Prisoners for
Debt, and re-
main in Sher-
riff's Custody

Sheriff an-
swerable for
Escape.

Escape War-
rant may be
granted upon
Affidavit made
in the Country.

Persons may
be apprehended
by Warrant on
a Sunday.

Person in
Custody of
Sheriff on a
Decree, and
making his Es-
cape, Sheriff
liable to pay,
&c.

Day of *March*, in the Year of our Lord one thousand seven hundred and seven, shall be seized or taken by virtue or Authority of the said Act, shall, instead of being committed to the common Gaol of the County wherein such Person or Persons shall be taken, be conveyed and committed to the Prison or Place where the Sheriff of such County detains or keeps the Debtors or Prisoners for Debt or Damage, there to remain in the Custody of the Sheriff of such County; subject to the same Rules and Directions, and under the same Restrictions, Regulations, and Penalties, and in such Manner and Form in all and every Respect, as if the said Person or Persons had been committed to the common Gaol of the County; and if any Person or Persons so taken and committed as aforesaid, shall at any Time make any Escape out of the said Prison or Place to which he, she, or they be so committed, as aforesaid, the Sheriff in whose Custody he, she, or they was or were, shall be answerable for such Escape to the Party grieved, in like Manner as in the Case of any other Escape.

II. And to the Intent that the Benefit of the said former Act may the more easily be had, in case the Person or Persons escaping shall be seen in Places distant from the City of *London*; Be it further enacted, That it shall and may be lawful to and for any one of the Judges of the respective Courts in the said former Act mentioned, to grant like Warrant and Warrants, upon Oath in Writing to be made before any Person commissioned under the Seal of the same Court to take Affidavits in the Country, (the same Oath being first duly filed) as by the said former Act he is empowered to do upon like Oath made before himself.

III. And be it declared and enacted, That it is and shall be lawful to apprehend and take upon the Lord's Day, any Person or Persons by virtue of any Warrant or Warrants granted in pursuance of this or of the said former Act.

IV. And be it further enacted by the Authority aforesaid, That if any Person or Persons is, are, or shall be in Custody of any Sheriff or other Officer, either by virtue of the said Act, or of this present Act, or otherwise, for not performing any Decree of the High Court of *Chancery*, or Court of *Exchequer*, whereby any Sum or Sums of Money is ordered or decreed to be paid, and shall afterwards make any Escape from the said Sheriff or other Officer, that then and in such Case the Person and Persons, their Executors or Administrators, to whom the Money was to be paid by the said Decree, shall have the same Remedy against the said Sheriff, as if such Person or Persons so escaping had been in Custody upon an Execution at Law, and shall and may recover the several Sum and Sums of Money decreed to be paid to him, her, or them in and by such Decree, against such Sheriff or other Officer, together with his, her, or their Costs of Suit, in any Action or Actions of Debt, or upon the Case, to be brought or commenced against such Sheriff or other Officer in any of her Majesty's Courts of Record at *Westminster*, wherein no Protection or Wager of

Law shall be admitted, or any more than one Impar lance; No. 20.
any Law, Usage, or Custom to the contrary in any wise not- 5 Anne, c. 9.
withstanding.

V. And for the Prevention of Disputes touching this present Act; Be it enacted by the Authority aforesaid, That the same and every Clause and Thing therein contained, shall be adjudged and taken to be a general Law, and that it shall not be needful to set forth the same in pleading, or any Part thereof. Act to be a general Law.

No. 21.

7 Anne, c. 12. (Ambassadors).—An Act for preserving the Privileges of Ambassadors and other publick Ministers of foreign Princes and States.

[For the History and particular Occasion of this Act being made; and the Privileges secured by it, see 3 Bar. 1478. 1 Blac. Com. 255. 4 id. 70.]

WHEREAS several turbulent and disorderly Persons having in a most outrageous Manner insulted the Person of his Excellency *Andrew Artemonowits Matueof*, Ambassador Extraordinary of his Czarish Majesty, Emperor of Great Russia, her Majesty's good Friend and Ally, by arresting him, and taking him by Violence out of his Coach in the publick Street, and detaining him in Custody for several Hours, in Contempt of the Protection granted by her Majesty, contrary to the Law of Nations, and in Prejudice of the Rights and Privileges which Ambassadors and other publick Ministers, authorized and received as such, have at all Times been thereby possessed of, and ought to be kept sacred and inviolable; Be it therefore declared by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That all Actions and Suits, Writs and Processes commenced, sued or prosecuted against the said Ambassador, by any Person or Persons whatsoever, and all Bail Bonds given by the said Ambassador, or any other Person or Persons on his Behalf, and all Recognizances of Bail given or acknowledged in any such Action or Suit, and all Proceedings upon or by Pretext or Colour of any such Action or Suit, Writ or Process, and all Judgments had thereupon, are utterly null and void, and shall be deemed and adjudged to be utterly null and void, to all Intents, Constructions, and Purposes whatsoever. No. 21.
7 Anne, c. 12.
Preamble reciting that the Czar's Ambassador having been arrested,

II. And be it enacted by the Authority aforesaid, That all Entries, Proceedings and Records against the said Ambassador or his Bail, shall be vacated and cancelled. enacted therefore, that all Suits against him should be void.
And all Proceedings against him and his Bail vacated.

III. And to prevent the like Insolencies for the future. Be it further declared by the Authority aforesaid, That all Writs and Processes that shall at any Time hereafter be used forth or prosecuted, whereby the Person of any Ambassador, or other All Processes against any public Minister, or any of his Servants, to be

No. 21. Publick Minister (1.) of any Foreign Prince or State, authorized and received as such by her Majesty, her Heirs or Successors, or the Domestick, or Domestick Servant (2.) of any such Ambassador, or other publick Minister, may be arrested or imprisoned, or his or their Goods or Chattels may be distrained, seized, or attached, shall be deemed and adjudged to be utterly null and void, to all Intents, Constructions, and Purposes whatsoever.

Punishment
for Attornies,
&c. suing forth
such Process.

IV. And be it further enacted by the Authority aforesaid, That in case any Person or Persons shall presume to sue forth or prosecute any such Writ or Process, such Person and Persons, and all Attornies and Solicitors prosecuting and soliciting in such Case, and all Officers executing any such Writ or Process, being thereof convicted, by the Confession of the Party, or by the Oath of one or more credible Witness or Witnesses, before the Lord Chancellor, or Lord Keeper of the Great Seal of Great Britain, the Chief Justice of the Court of Queen's Bench, the Chief Justice of the Court of

(1.) It was held in *Heathfield v. Chilton*, 4 Bur. 2015, to be insufficient to claim a Discharge of a Defendant, as being Servant to the Minister of the Prince, Bishop of Liege; that it was necessary to learn in what Manner the Minister was accredited. — "Certainly," said Lord Mansfield, "he was not Ambassador, which is the first Rank. Envoy indeed is a second Class, but he is not shewn to be even an Envoy: he was called Minister, it is true, but Minister alone is an equivocal Term." — The Case went off upon a collateral Point. Lord Mansfield in this Case said, that the Law of Nations does not take in Consuls or Agents of Commerce, although received as such by the Courts at which they are employed; and this Point was expressly determined in an elaborate Judgment in the very recent Case of *Vivash v. Becker*, 3 M. & S. 284.

(2.) The Servant need not lie in the House, although he must do some Service there. *Evans v. Elgar*, 2 Str. 797; *Widmore v. Alvarez*, cited *ibid*. Many Cases arise upon Claims of Privilege by Persons as Servants of the Count Haras, the Bavarian Ambassador, of whom it was said, that although a Minister of a very humble Rank, he had more Domesticks registered than the Ambassadors of the most potent Powers in Europe. — In the first Case that occurs, *Masters v. Menby*, 1 Bur. 401, Application was made to discharge the Defendant, as being his Messenger, and it was sworn that he sometimes executed Service as such. The Defendant was a Land Waiter at the Custom-house, and the Court were of Opinion, that he could never be deemed a *bona fide* Domestic. — In *Triquer v. Bath*, 3 Bur. 1478, the Privilege was allowed to the Defendant, an English Secretary of the Count; the Defendant's Affidavit being so framed, that every Thing was sworn that in absolute Strictness could be required, to bring him within the Description of a Domestic Servant; and the Court held that it was sufficient if an actual *bona fide* Service were proved; and that if such a Service were proved, they must not, upon bare Suspicion, suppose it to have been merely colourable and collusive. — In *Lockwood v. Cogswame*, 3 Bur. 1676, the Claim of Privilege was disallowed to the Defendant as the Count's Physician, as not being a Case of *bona fide* Service, and the Court said, it would be of very bad Consequence if Protections should be set up for Sale, or made use of merely for the sake of screening People from their just Debts. — In *Darling v. Atkins*, 3 Will. 33, the Privilege was disallowed to the Count's English Secretary, he being Purser of a Man of War, which was held to be an Office incompatible with the Situation of Secretary to the Ambassador.

The Ambassador's Secretary is privileged, the Statute being only explanatory of the Law of Nations, and the Words "Domestic, and Domestic Servant," are only put by Way of Example; *Hopkins v. De Robeck*, 3 T. R. 79.

Common Pleas for the Time being, or any two of them, shall be deemed Violators of the Laws of Nations, and Disturbers of the publick Repose, and shall suffer such Pains, Penalties, and corporal Punishment, as the said Lord Chancellor, Lord Keeper, and the said Chief Justices, or any two of them shall judge fit to be imposed and inflicted. No. 21.
7 Anne, c. 12.

V. Provided, and be it declared, That no Merchant or other Trader whatsoever, within the Description of any of the Statutes against Bankrupts, who hath or shall put himself into the Service of any such Ambassador or publick Minister, shall have or take any Manner of Benefit by this Act; and that no Person shall be proceeded against as having arrested the Servant of an Ambassador or publick Minister, by virtue of this Act, unless the Name of such Servant be first registered (3.) in the Office of one of the principal Secretaries of State, and by such Secretary transmitted to the Sheriffs of London and Middlesex for the Time being, or their Under-Sheriffs or Deputies, who shall, upon the Receipt thereof, hang up the same in some publick Place in their Offices, whereto all Persons may resort, and take Copies thereof, without Fee or Reward. No Merchant,
&c. to have any
Benefit of this
Act.

Nor the Ser-
vant of an Am-
bassador, unless
his Name be
registered, &c.

VI. And be it further enacted by the Authority aforesaid, That this Act shall be taken and allowed in all Courts within this Kingdom as a publick Act; and that all Judges and Justices shall take Notice of it without special Pleading; and all Sheriffs, Bailiffs, and other Officers and Ministers of Justice, concerned in the Execution of Process, are hereby required to have regard to this Act, as they will answer the contrary at their Peril. This Act to
be taken as a
Publick Act

(3) The Statute only requires the Names of the Persons privileged to be registered, for the Purpose of Proceeding against the Parties criminally, for a Violation of the Act, and not for the Purpose of Exemption from Arrest; *Hopkins v. De Robeck*, J T. R. 79.

No. 22.

6 George I. c. 21. — An Act for preventing Frauds and Abuses in the publick Révenues of Excise, Customs, Stamp-duties, Post-office, and House-money. B.

LIII. **A**ND whereas many Under-Sheriffs, and other Persons acting as such, do make and deliver out blank Warrants and other Warrants to Attornies, Bailiffs and others, for the arresting and taking Persons into Custody upon mean Process, without having any Writ or Writs or other legal Process in their Custody to justify the same, whereby No. 22.
6 George I.
c. 21.

Sheriffs, &c.
delivering out
Warrants for
arresting Per-

ties, their Clerks or Agents, shall, at any Time or Times after the first Day of August one thousand seven hundred and Custody, &
forfeit 10l.

No. 22.
6 George I.
c. 21.

twenty, make or cause to be made or delivered out to any Person or Persons whomsoever, any Warrant or Warrants, either blank or filled up in Part or in all, before they or some of them shall actually have in their Custody the respective Writs upon which such Warrants should and ought to issue, that then the several Persons so offending, and every of them, shall forfeit the Sum of ten Pounds for every such Offence.

No. 23.

10.

12 George I. c. 29.---An Act to prevent frivolous and vexatious Arrests.

No. 23.

12 George I.
c. 29.

'Explained and amended by 5 Geo. 2. c. 27.

None to be held to Special Bail in a Superior Court under 10l.

Nor in an Inferior Court, under 40s.

Not appearing, Plaintiff may enter a common Appearance, &c.

Where the Cause of Action amounts higher, Affidavit to be made thereof, &c.

I. **FOR** the more effectual preventing frivolous and vexatious Arrests, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth day of June one thousand seven hundred and twenty-six, no Person shall be held to Special Bail upon any Process issuing out of any Superior Court, where the Cause of Action shall not amount to the Sum of ten Pounds or upwards; (1.) nor out of any Inferior Court (2.) where the Cause of Action shall not amount to the Sum of forty Shillings or upwards; and that in all Cases, where the Cause of Action shall not amount to the Sum of ten Pounds or upwards in any such Superior Court, or to forty Shillings or upwards in any such Inferior Court (and the Plaintiff or Plaintiffs shall proceed by the Way of Process against the Person) he, she, or they shall not arrest or cause to be arrested, the Body of the Defendant or Defendants, but shall serve him, her, or them personally, within the Jurisdiction of the Court, with a Copy of the Process; and if such Defendant or Defendants shall not appear at the Return of the Process or within four Days after such Return, in such Case it shall and may be lawful to and for the Plaintiff or Plaintiffs, upon Affidavit being made, and filed in the proper Court, of the personal Service of such Process as aforesaid (which said Affidavit shall be filed gratis) to enter a Common Appearance or file Common Bail for the Defendant or Defendants, and to proceed thereon, as if such Defendant or Defendants had entered his, her, or their Appearance, or filed Common Bail; any Law or Usage to the contrary notwithstanding.

II. And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of June, one thousand seven hundred and twenty-six, in all Cases, where the Plaintiff or Plaintiffs Cause of Action shall amount to the Sum of ten Pounds, or forty Shillings or upwards as aforesaid, Affidavit shall be made and filed of such Cause of Action

(1.) Raised to £ 15 by Stat. 51 Geo. III. c. 124, sec. 1, infra.

(2.) This Distinction is taken away by Stat. 19 Geo. III. c. 70, sec. 1, post.

(which Affidavit may be made before any Judge or Commissioner of the Court, out of which such Process shall issue, authorized to take Affidavits in such Courts, or else before the Officer who shall issue such Process, or his Deputy, which Oath such Officer or his Deputy are hereby impowered to administer;) and for such Affidavit one Shilling over and above the Stamp Duties shall be paid, and no more; and the Sum or Sums specified in such Affidavit shall be indorsed on the Back of such Writ or Process, for which Sum or Sums so indorsed, the Sheriff or other Officer to whom such Writ or Process shall be directed, shall take Bail, and for no more; But if after the said twenty-fourth Day of *June* one thousand seven hundred and twenty-six, any Writ or Process shall issue for the Sum of ten Pounds or upwards, and no Affidavit and Indorsement shall be made as aforesaid, the Plaintiff or Plaintiffs shall not proceed to arrest the Body of the Defendant or Defendants, but shall proceed in like Manner as is by this Act directed in Cases where the Cause of Action does not amount to the Sum of ten Pounds, or forty Shillings or upwards as aforesaid.

III. [Judges of Inferior Courts may proceed in Suits not exceeding 5l. though there may be other Actions higher.]

IV. [Persons convicted of Forgery, &c. practising as Attorneys, &c. offending against this Act, to be transported.]

No. 23.
12 George I.
c. 29.

No. 24.

2 George 2. c. 22. An Act for the Relief of Debtors with respect to the Imprisonment of their Persons.

[This Act contains Provisions for the Relief of Insolvent Debtors, similar to those of 32 Geo. II. c. 28. It was a temporary Act, and after different Continuances permitted to expire with the Exception of Section 13, as to settling off mutual Debts. This Provision is of so much Importance, that it will form the Subject of a separate Title.]

No. 25.

George II. c. 27.—An Act to explain, amend and render more effectual an Act made in the twelfth Year of the Reign of his late Majesty, King *George* the First, intituled, “An Act to prevent frivolous and vexatious Arrests.”

WHEREAS in an Act made in the twelfth Year of the Reign of his late Majesty King *George* the First, intituled, “An Act to prevent frivolous and vexatious Arrests,” it is amongst other Things enacted, That from and after the twenty-fourth Day of *June*, which was in the Year of our Lord one thousand seven hundred and twenty-six, no Person should be held to special Bail upon any Process issuing out of any superior Court, where the Cause of Action should not amount to the Sum of ten Pounds or upwards, nor out of any

No. 25.
5 George II.
c. 27.

Recital of 12
Geo. I. c. 29.

No. 25.
George II.
c. 27.

Process under
rol. or 40s.
respectively,
to be in Eng-
lish, and in a
common Hand.

Defendant to
appear within 8
days.

Affidavit to be
made of the
Service.

inferior Court, where the Cause of Action should not amount to the Sum of forty Shillings or upwards; and that in all Cases where the Cause of Action should not amount to the Sum of ten Pounds or upwards in any such superior Court, or to forty Shillings or upwards in any such inferior Court (and the Plaintiff or Plaintiffs should proceed by the way of Process against the Person) he, she, or they should not arrest or cause to be arrested the Body of the Defendant or Defendants, but should serve him, her, or them personally, within the Jurisdiction of the Court, with a Copy of the Process; and if such Defendant or Defendants should not appear at the Return of the Process, or within four Days after such Return, in such Case it should and might be lawful to, and for the Plaintiff or Plaintiffs, upon Affidavit being made and filed in the proper Court of the personal Service of such Process as aforesaid (which said Affidavit should be filed *gratis*) to enter a common Appearance or file common Bail for the Defendant or Defendants, and to proceed thereon, as if such Defendant or Defendants had entered his, her, or their Appearance, or filed common Bail, any Law or Usage to the contrary notwithstanding: And whereas the said Process in the said Act mentioned is in a Language for the most Part unknown to such Defendant or Defendants: And whereas such Defendant or Defendants are to appear at the Return of such Process, or within four Days after such Return, the Shortness of which Time hath been found inconvenient in many Cases: And whereas Affidavit is to be made of the personal Service of such Process, and unnecessary Expence and Delay has been occasioned for want of a sufficient Number of Persons duly authorized to take such Affidavits: For Remedy whereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the End of this present Session of Parliament, in all Cases where the Cause of Action shall not amount to the Sum of ten Pounds or upwards in any superior Court, or to forty Shillings or upwards in any inferior Court, the Writ, Process, Declaration and all other Proceedings shall be in the English Tongue, and written in Words at length, in a common legible Hand and Character: and the Defendant or Defendants in such Cases (a Copy of such Process in English having been served, as by the said Act is directed) shall appear at the Return thereof, or within eight Days after such Return, and the Affidavit of the Service of such Process shall and may be made before any Judge or Commissioner of the Court, out of which such Process shall issue, authorized to take Affidavits in such Courts, or else before the proper Officer for entering common Appearances in such Court, or his lawful Deputy: and which Affidavit is hereby directed to be filed *gratis*.

II. Provided always, That no Attorney, Bailiff or other Person, shall have, take, charge or demand more than five Shillings, for the making and serving a Copy of such Process issuing out of any superior Court, or more than one Shilling for the making and serving a Copy of such Process issuing out of any inferior Court, on such Defendant or Defendants respectively as aforesaid.

III. Provided nevertheless, That in particular Franchises and Jurisdictions the proper Officer there shall execute such Process.

IV. And be it further enacted by the Authority aforesaid, That upon every Copy of such Process, to be served upon any Defendant, shall be written in like Manner an *English* Notice to such Defendant of the Intent and Meaning of such Service, to the Effect following, *videlicet*,

A. *B. you are served with this Process, to the Intent that you may by your Attorney appear in his Majesty's Court of at the Return thereof, being the Day of (as the Case shall happen to be) in order to your Defence in this Action; and for which said English Notice no Fee or Reward shall be demanded or taken.*

No. 25.
5 George II.
c. 27.
5s. for making and serving Copy of Process in superior, and ss. in inferior Courts
Process in particular Franchises.

Form of English Notice to Defendant.

V. And whereas great and unnecessary Expences have been occasioned in small and trifling Suits, by the suing forth of special Writs; For Remedy whereof be it enacted by the Authority aforesaid, That from and after the End of this present Session of Parliament, where the Cause of Action shall not amount to the Sum of ten Pounds or upwards in any superior Court, or to forty Shillings or upwards in any inferior Court, no special Writ or Writs, nor any Process specially therein expressing the Cause or Causes of Action, shall be sued forth or issued from any such superior or inferior Court respectively, in order to compel any Person or Persons to appear thereon in such Court or Courts: And all Proceedings and Judgments, that shall, from and after the End of this present Session of Parliament, be had on any such Writ or Process, shall be, and is hereby declared to be void and of none Effect; and every Attorney or Officer of such Court or Courts, suing forth or issuing any such Writ or Process, shall forfeit the Sum of ten Pounds to the Person or Persons aggrieved thereby, who shall and may recover the same by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, together with full Costs of Suit, in which no *Essoin*, Protection or Wager of Law, shall be allowed, or any more than one Imparance.

No special Writs may be issued in smaller Suits.

Penalty on issuing such special Writs 10l. and Costs of Suit.

VI. And whereas the said Act hath been found by Experience to be useful and Beneficial, Be it therefore enacted by the Authority aforesaid, That the said Act (except wherein the same is by this present Act explained and amended) shall be and is hereby continued, and shall, together with this present Act, be and remain in full Force from the End of this present

These Acts to continue seven Years, &c.

Made perpetual 21 Geo. 2. c. 3.

- No. 25. Session of Parliament, for, and during the Term of seven
 5 George II. Years, and from thence to the End of the then next Session of
 c. 27. Parliament, and no longer.

No. 26.

8 George II. c. 24. — An Act to explain and amend an Act passed in the second Year of the Reign of his present Majesty, intituled, "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons."

[See post. Title *Set Off*.]

No. 27.

- P. 13 George II. c. 18. — An Act to continue several Laws therein mentioned * * * * *
 for the better and more speedy Execution within particular Franchises or Liberties * * * * *

No. 27.
 13 George II.
 c. 18.

Sheriffs to ap-
 point Deputies
 at the Request
 of Lords of
 Liberties.

VI. **A**ND, for the better and more speedy Execution of Process within particular Franchises or Liberties; be it further enacted by the Authority aforesaid, That from and after the third Day of *November*, which shall be in the Year of our Lord one thousand seven hundred and forty, the Sheriff of every Shire, being no City or Town, made a Shire, within which there is any Franchise or Liberty, the Lord or Proprietor whereof is of Right intituled to the Return of Writs within such Franchise or Liberty, shall, (if required by any such Lord or Proprietor) within one Month next after such Request made to him for that Purpose, nominate and appoint one or more sufficient Deputy or Deputies, at the proper Costs and Charges of such Lord or Proprietor, to be resident at some convenient Town or Place in or near such Franchise or Liberty, to be for that Purpose appointed by the Lord High Chancellor of *Great Britain*, and the Chief Justice of his Majesty's Courts of *King's Bench* and *Common Pleas* for the Time being, or any one of them, who is and are hereby authorized and empowered to appoint such convenient Town or Place, as to him or them shall seem meet, and to settle and direct what Costs and Charges shall be paid therefore by such Lord or Proprietor; and such Deputy or Deputies shall reside at such Town or Place so to be appointed as aforesaid, and shall have Authority in the Sheriff's Name, and is and are respectively authorized and empowered, to receive and open all such Writs and Process (the Execution or Return whereof doth of Right belong to the Lord or Proprietor of any such Franchise or Liberty), and thereupon in the Name, and under the Seal of the Sheriff, to make and issue out such Warrant or Warrants to such Lord

or Proprietor as by Law is requisite, for the due Execution of such Writs or Process; and every such Deputy or Deputies is and are hereby required, upon Tender of any such Writ or Process, to receive and open the same, and to issue out such Warrant thereon, without Delay, in such Manner and Form as the Sheriff himself may or ought to do, without taking any further or other Fee than what is now due and accustomed for such Warrant; upon Pain that every such Sheriff or Deputy respectively, who shall be guilty of any wilful Neglect or Default in the Premises, shall be liable to be punished for the same, as for a Contempt of one of his Majesty's said Courts of *Chancery*, *King's Bench*, or *Common Pleas*, (as the Case shall require), and shall likewise make Satisfaction to the Party or Parties that shall receive Damage thereby.

No. 27.
13 George II.
c. 18.

.No. 28.

20 George II. c. 37.—An Act for the Ease of Sheriffs with Regard to the Return of Process.

FOR the Ease of Sheriffs with Regard to the Return of Process, Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-ninth Day of *September*, one thousand seven hundred and forty-seven, all Sheriffs of any County, City, Liberty, Division, Town Corporate or Place, shall, at the Expiration of their Office, turn over to the succeeding Sheriff, by Indenture and Schedule, all such Writs and Process as shall remain in their Hands unexecuted, who shall duly execute and return the same; and in case any such Sheriff shall refuse or neglect to turn over such Process in manner aforesaid, every such Sheriff so neglecting or refusing, shall be liable to make such Satisfaction by Damages and Costs to the Party aggrieved, as he, she or they shall sustain by such Neglect or Refusal.

No. 28.
20 George II.
c. 37.

Process un-
executed, to be
turned over;

II. And be it further enacted by the Authority aforesaid, That no Sheriff shall be liable to be called upon to make a Return of any Writ or Process, unless he be required so to do within six Months after the Expiration of his said Office (1.)

Sheriff not
liable to make
Return after 6
Months.

(1.) By the true Construction of the above Act, a Sheriff is not liable to be called upon, unless *within six lunar Months*, and the *Day* on which he goes out of Office is to be reckoned Part of the six Months.—Dove. 446.

No. 29.

32 George II. c. 28. — An Act for the Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates for their Creditors' Benefit.*

No. 29.
32 George II.
c. 28.

Officer may
not carry his
Prisoner to any
Tavern or other
Publick House,
without his
Consent, &c.

WHEREAS many Persons suffer by the Oppression of inferior Officers in the Execution of Process for Debt, and the Exaction of Gaolers to whom such Debtors are committed: For Remedy whereof it may be reasonable not only to enforce the Execution of the Laws now in being against such Oppressions and Exactions, more especially several Clauses in a Statute made at a Parliament held in the twenty-second and twenty-third Years of the Reign of King Charles the Second, intituled, "An Act for the Relief and Release of the poor distressed Prisoners for Debt," but likewise to make some further Provisions for the Ease and Relief of Debtors who shall be willing to satisfy their Creditors to the utmost of their Power; Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same, That no Sheriff, Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Minister whatsoever, shall at any Time or Times hereafter convey or carry, or cause to be conveyed or carried, any Person or Persons by him or them arrested, or being in his or their Custody by virtue or colour of any Action, Writ, Process or Attachment, to any Tavern, Alehouse, or other Publick Victualling or Drinking House, or to the private House of any such Officer or Minister, or of any Tenant or Relation of his, without the free and voluntary Consent of the Person or Persons so arrested or in Custody; nor charge any such Person or Persons with any Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other Liquor or Things whatsoever, save what he, she or they shall call for, of his, her, or their own free Accord; nor shall cause or procure him, her, or them, to call or pay for any such Liquor or Things, except what he, she, or they shall particularly and freely ask for; nor shall demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other or greater Sum or Sums of Money than is or shall be by Law allowed to be taken or demanded for any Arrest or Taking, or for detaining, or waiting till the Person or Persons so arrested or in Custody shall have given an Appearance or Bail, as the Case shall

* This is usually called the Lords' Act, from having originated in the House of Lords. Similar Provisions with respect to the Liberation of Insolvent Debtors were contained in Statute 2 Geo. II. c. 22, with the Exception of the compulsory Clauses.

require, or agreed with the Person or Persons at whose Suit or Prosecution he, she, or they shall be taken or arrested, or until he, she, or they shall be sent to the proper Gaol belonging to the County, Riding, Division, City, Town, or Place where such Arrest or Taking shall be; nor shall exact or take any Reward, Gratuity or Money for keeping the Person or Persons so arrested or in Custody out of Gaol or Prison; nor shall carry any such Person to any Gaol or Prison within four and twenty Hours from the Time of such Arrest, unless such Person or Persons so arrested shall refuse to be carried to some safe and convenient Dwelling House, of his, her, or their own Nomination or Appointment, within a City, Borough, Corporation, or Market Town, in case such Person or Persons shall be there arrested; or within three Miles from the Place where such Arrest shall be made, if the same shall be made out of any City, Borough, Corporation, or Market Town, so as such Dwelling House be not the House of the Person arrested, and be within the County, Riding, Division, or Liberty, in which the Person under Arrest, was arrested; and then and in any such Case it shall be lawful to and for any such Sheriff, or other Officer or Minister, to convey or carry the Person or Persons so arrested, and refusing to be carried to such safe and convenient Dwelling House as aforesaid, to such Gaol or Prison as he, she, or they may be sent to, by virtue of the Action, Writ, or Process against him, her, or them. (1.)

No. 29.
32 George II.
c. 28.

(1.) As to the Sufficiency of an Affidavit to hold to Bail, see Tidd's Practice, c. 8. It is an established Rule, that in the King's Bench no supplementary or explanatory Affidavit can be received on the Part of the Plaintiff, nor any counter or contradictory one on the Part of the Defendant. The Practice is otherwise in the Common Pleas; as to supplemental Affidavits, see *Gunham v. Hammond*, 2 B. & P. 298, and the Cases there cited: and there are *Ducta* as to its being otherwise with respect to Affidavits in Contradiction; but I apprehend that such a Practice is allowed, if at all, very sparingly, and there are not any recent Traces of it in the Reports.

With respect to the general Question, of the Justice and Propriety of admitting counter Affidavits upon the Subject, (for which the Interposition of the Legislature would be required,) I have long entertained a very strong Opinion in favour of such a Measure, and am satisfied that great Injustice and Oppression are exercised by Means of the Opportunity which a Plaintiff has of depriving a Person of his Liberty, by an Affidavit in common Form, to which no Contradiction can be received. The small Degree of Scruple which is often manifested in this, as well as many other Cases, with respect to making Affidavits in a common Form, affords Matter for the most serious Reflection. There is a common cant Maxim, that the Courts cannot try the Cause upon Affidavits; which, like many other cant Maxims, has an imposing Sound with very little Meaning; as the Exercise of the Judgment of the Court, with respect to the Measure of their Precaution, can have no legitimate Influence upon the Verdict which may be afterwards given upon Evidence of the Facts; and the admitting, with due Discretion and Moderation, an Affidavit on the Behalf of the Defendant, which might put the Plaintiff upon stating, specifically, such Facts as would shew the Existence of a legal Debt by an Affidavit, upon which Perjury can be distinctly assigned, would be a considerable Check upon that random Kind of Swearing, by which any Person who sets up a Demand against another, however disputable, with respect either to the Facts or the Law, is made in the first Instance, and so far as relates to the Question of Arrest, the absolute and conclusive Judge of his own Case, in a

No. 29.
32 George II.
c. 28.

II. And be it further enacted by the Authority aforesaid, That no Sheriff, Under Sheriff, Bailiff, Serjeant at Mace, or

Point which may occasion Detriment or Ruin to the Defendant, and has certainly very often the Effect of obtaining Payment of a Demand contrary to the real Truth and Justice of the Case.

It is agreed that the Restriction of this Act does not extend to Writs upon which Bail is directed to be taken by special Order of a Judge.

Although the Statute prevents a Person being held to Bail in a penal Action of Debt, there is no such Restriction upon a Proceeding by Information in the Crown Office, where a Process of Attachment issues. Mr. Chitty, in his Treatise on the Game Laws, mentions this as a Circumstance which renders the Proceeding by Information peculiarly desirable, when the Offender is likely to abscond: but however desirable it may be for the Objects of a Prosecution on the Game Laws, I am very far from thinking, that to allow the Continuance of such a Practice, and the depriving a Party of his Liberty for such an alleged Offence, is desirable as affecting the real Purposes of Justice.

For Penalties in the Exchequer, a Person is arrested upon a Process which merely gives him Information, in technical Language, of the legal Offence which he is supposed to have incurred, without having any Access to the Affidavit upon which the Process issues, or any Information of the particular Manner in which he is charged with having offended, until the Case is actually brought to Trial; and although no Suspicion can be entertained of improper Intentions on the Part of the Officers having the Conduct of such Proceedings, there may be great Room for sinister Proceedings in those who may have an Interest in communicating to them false Information; and the more completely destitute of Foundation the Accusation may be, the greater Difficulty will arise in preparing to meet it. In fact, the being prepared to meet the specific Case which is offered at the Trial, is not unfrequently urged in Argument as shewing a Consciousness of its Truth. In the Course of my own Practice, I was lately consulted on Behalf of a Person imprisoned on a Charge of an Offence against the Revenue, of the Ground and Foundation of which he asserted his entire Ignorance. I had no Means of forming an Opinion of the Veracity of the particular Statement, and a Verdict passed against the Party for the Penalty claimed; but I was fully satisfied of the probable Effect of the existing Practice being such as I have represented, and surely there ought to be very strong Motives of public Utility to support a general System, which is manifestly capable of admitting so great an Abuse: and although, on the one Hand, it may be admitted to be an important Object to prevent the Escape of a guilty Person from the Claims of Justice, it is no less important to guard against the Admission of a Course of Procedure, which may have the Effect of unjustly depriving those of their Liberty, who, with any reasonable Degree of Probability, may assert their Innocence; and the Loss and Inconvenience which naturally attend a Departure from the Kingdom, with a Relinquishment of all existing Connections and Pursuits, is in itself no small Security for the Party being finally amenable to the Exigencies of the Law, and is therefore a sufficient Reason, not only for using the greatest Degree of Prudence in Individuals, but for affording a greater Protection by the Law against a previous Imprisonment, upon a Charge resting upon Information, which is not disclosed, and which a Person unjustly accused has no Means to oppose.

The admitting counter Affidavits on the Part of Defendants, would, I am aware, give a considerable Accession of Trouble to the Judges of the superior Courts; but in this, and many other respects, Alterations in the Law are highly requisite, for the Purpose of affording some Relief from the great Pressure of an accumulated Weight of Business: — a Subject which I shall elsewhere take an Opportunity of adverting to more particularly.

I do not think it necessary to refer more particularly to the Statutes which require Affidavits to hold Bail to negative a Tender in Bank Notes, and which I only continued as a temporary Measure.

By the Law of Scotland no Person can be arrested previous to a Judgment against him, except upon a Warrant from a Judge, issued upon an Affidavit of the Creditor, that he believes his Debtor to be in *Meditatione Fugæ*; and the Creditor is subject to Damages should the Circumstances not afford sufficient Ground for the Application.

other Officer or Person, shall at any Time or Times hereafter, take or receive any other or greater Sum or Sums for one or more Nights Lodging, or for a Day's Diet, or other Expences of any Person or Persons under Arrest, on any Writ, Action, Attachment or Process, other than what shall be allowed as reasonable in such Cases by some Order or Orders already made, or which shall hereafter be made by the Justices of the Peace at some General or Quarter Sessions which shall be held for the County, Riding, Division, City, Town or Place where such Arrest or Taking shall be, who are hereby authorized and required, with all convenient Expedition, to make some standing Order or Orders for ascertaining such Charges and Expences within their respective Counties, Ridings, Divisions, Cities, Towns and Jurisdictions, if the same hath or have not already been there made; and if any such Order or Orders hath or have been there already made, such Justices for the Time being, at their respective General or Quarter Sessions, are hereby authorized and required to vary or alter the same, from Time to Time, as they shall see Occasion; and also are hereby required to cause a Copy of every such Order, and of every Variation or Alteration thereof, signed by the Clerk of the Peace of every such County, Riding, Division, City, Town or Place respectively, to be put and kept up in some conspicuous Place in the Sessions House, or some other proper Place, of every such respective County, Riding, Division, City, Town or Place as such Justices shall order, so as the same may be there seen and examined as Occasion may require.

No. 29.
32 George II.
c. 28.

Nor may Officer take for the Lodging, &c. of such Prisoner, more than shall be allowed.

III. And to the Intent that no Person may suffer by reason of his Ignorance of the Provisions made by this Act, Be it further enacted by the Authority aforesaid, That all and every Sheriff, Under Sheriff, and Bailiff of any Liberty, and also the respective Secondaries and Clerk Sitters in the respective Compters in London, and all other Persons intrusted with the Execution of Process, or who shall enter any Actions, or make any Warrant or Warrants, or any Writ or Process, in order to have the same executed, shall deliver a printed Copy of the several Clauses contained in this Act relating to Bailiffs, Serjeants, and other Officers and Persons who shall be employed under them respectively to execute any Writ, Process or Attachment, or who shall arrest any Person on any Action which shall be entered, or otherwise, within their respective Sheriffwicks or Jurisdictions, to every such Bailiff, Serjeant, Officer and other Person, and shall make it Part of the Condition of every Security or Bond which shall be given or made to any such Sheriff or Under Sheriff, or Bailiff of any Liberty, by any Bailiff, Serjeant at Mace, or other Officer or Person, who shall be employed or intrusted to execute any such Writ or Process as aforesaid under him, them, or any of them, that every such Bailiff, Serjeant at Mace, or Officer, and other Person respectively, shall and will shew and deliver a Copy of the said Clauses to every Person he shall arrest by virtue of any Process, Action, Writ or Attachment, or under any Warrant made out thereon,

Sheriffs, &c. to deliver printed Copies of these Clauses to Bailiffs, &c.

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32 George II.
c. 28.

and carry or go with to any Publick or other House where any Liquor shall be sold; and also shall and will permit every such Person who shall be so arrested, or any Friend of him or her, to read over the same Clauses before any Liquor, Meat or Victuals shall be at any such Publick or other House called for, or brought to any such Person who shall be so under Arrest there: and in case any Bailiff, Serjeant at Mace, or other Officer or Person, shall in any respect offend in the Premises, every such Offence, besides the Breach of the Condition of every such Security Bond, shall be accounted and deemed a Misdemeanor in the Execution of the Process or Action on which any such Person was arrested, and shall be punishable as such by virtue of this Act.

Sheriffs and Gaolers to allow Debtors in Custody to send for, or have brought to them Victuals and Beer from what Place they shall think fit;

IV. And be it further enacted by the Authority aforesaid, That every Sheriff, Under Sheriff, Bailiff of any Liberty, Gaoler and Keeper of any Prison or Gaol, and other Person and Persons, to whose Custody or Keeping any one hath been, or hereafter shall be arrested, taken, committed or charged in Execution, by virtue of any Writ, Process or Action, or Attachment, shall at all Times hereafter permit and suffer every such Person and Persons, during his, her and their respective Continuance under Arrest or in Custody, or in Execution for any Debt, Damages, Costs or Contempt, at his, her and their free Will and Pleasure, to send for, or have brought to him, her or them, at seasonable Times in the Day-time, any Beer, Ale, Victuals, or other necessary Food, from what Place he, she or they shall think fit, or can have the same; and also to have and use such Bedding, Linen, and other necessary Things as he, she, or they shall have Occasion for and think fit, or shall be supplied with, during his, her, or their Continuance under any such Arrest or Commitment, without purloining or detaining the same, or any Part thereof, or inforcing or requiring him, her, or them, to pay for the having or using thereof, or putting any Manner of Restraint or Difficulty upon him, her, or them, in the using thereof, or relating thereto; and no such Prisoner or Prisoners shall pay any Thing in respect thereof to any such Sheriff, Under Sheriff, Bailiff of any Liberty, Gaoler, Keeper, or other Person as aforesaid.

and to have and use such Bedding and Linen, &c.

The L. C. Justices of the King's Bench,

V. And be it further enacted by the Authority aforesaid, That the Lord Chief Justice of the Court of King's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, for the Time being, or any two of them, together with the Mayor and two of the Aldermen, or with three of the Aldermen of the City of London without the Mayor for the Time being, for and in respect of the Gaols and Prisons within the said City of London; and the said Lords Chief Justices, and Lord Chief Baron, or any two of them, with three Justices of the Peace of the Counties of Middlesex and Surry respectively, for and in respect of the Gaols and Prisons of the said Counties of Middlesex and Surry respectively; are hereby respectively required, with all convenient

Speed, to meet from Time to Time, at such Place as they shall think fit and appoint, and there to settle and establish a Table of the Rates and Fees which shall be allowed to be taken by any Gaoler or Keeper in *London*, or in the several Counties of *Middlesex* and *Surry*, where the same hath not been already established, and where the same hath been already established, they are hereby respectively authorized to meet together as aforesaid, and vary the same from Time to Time as they shall see Occasion; and the Justices of the Peace of every other County, Riding, Division, City and Place, for and in respect of the Gaols and Prisons in each other respective County, Riding, Division, City, Town and Place, are hereby respectively authorized and required, at any General or Quarter Session of the Peace to be held for such County, Riding, Division, City, Town or Place respectively, with all convenient Speed, to settle and establish a Table of the respective Rates and Fees, which shall be allowed to be taken by any Gaoler or Keeper within their respective Jurisdictions, where the same hath not been already settled and established, and where the same hath been already settled and established, then to vary and alter the same, from Time to Time, as there shall be Occasion: and that the respective Tables of such Fees, which shall be so made, varied, or altered, for or in respect of the several Gaols and Prisons within the City of *London*, and Counties of *Middlesex* and *Surry* aforesaid, shall be signed from Time to Time, by the said Lords Chief Justices, and Lord Chief Baron, or two of them, and the Mayor and two Aldermen of the said City of *London*, or by three Aldermen of the said City of *London* without the Mayor, and by three Justices of the Peace of the Counties of *Middlesex* and *Surry* respectively, within their respective Jurisdictions; by whom the same shall be respectively made, varied, or altered: and that the Tables of such Fees, which shall be made or altered or varied, for or in respect of the rest of the said Gaols and Prisons, shall from Time to Time, be signed by three or more of the Justices of the Peace who shall so make or vary, or alter the same at any such General or Quarter Session of the Peace as aforesaid, and shall be afterwards reviewed and confirmed or moderated, within that Part of *Great Britain* called *England*, by the Judges of Assize, and if within the Principality of *Wales*, or County Palatine of *Chester*, by the Justices of Great Sessions respectively, at the next Assizes or Great Sessions, which shall be held in the respective Counties within their several Circuits next after the making, or varying, or altering of any such Table of Fees; and the same shall be afterwards signed by the respective Judges of Assize, or Justices of Great Sessions, who shall respectively review, confirm, or moderate the same, and three or more Justices of the Peace of such respective County, Riding, Division, City, Town, or Place, under their respective Hands, for and in respect of the respective Gaols and Prisons within their respective Circuits, Counties, Ridings, Divisions, Cities, Towns, or Jurisdictions.

No. 29.
32 George II.
c. 28.
to meet and settle a Table of the Fees, and to vary the same as they shall see Occasion.

No. 29.
32 George 11.
c. 28.

Rules and
Orders for the
better Govern-
ment of the
Gaols and Pri-
soners therein;
to be made by
the respective
Courts in West-
minster Hall,
&c.

VI. And be it also enacted by the Authority aforesaid, That proper Rules and Orders for the better Government of the respective Gaols and Prisons in that Part of *Great Britain* called *England*, and of the Prisoners who are or shall be therein, where such Rules and Orders have not already been made, shall, with all convenient Speed, be made by the several Courts in *Westminster Hall*, for and in respect of the several Gaols or Prisons belonging to such Courts respectively; and by the said Lords Chief Justices, and Lord Chief Baron, or any two or more of them, together with the Mayor and two Aldermen of the said City of *London*, or three or more Aldermen of the said City of *London* without the said Mayor, for and in respect of the Gaols and Prisons within the said City of *London*; and by the said Lords Chief Justices, and Lord Chief Baron, or any two of them for the Time being, together with three or more Justices of the Peace, for and in respect of the Gaols and Prisons within the said Counties of *Middlesex* and *Surry*; and by three or more Justices of the Peace of each County, Riding, or Division, City, Borough, Town Corporate or Place, for and in respect of the Gaols and Prisons within their respective Counties, Ridings, Divisions, Cities, Boroughs, Towns Corporate or Places, at some General or Quarter Sessions as aforesaid; and the same shall afterwards be reviewed, and may be altered, if thought necessary, by the Judge or Judges of Assize, or Justice or Justices of Great Sessions respectively, at the next Assizes or Great Sessions which shall be held by them respectively, within their several Circuits, after the making or altering of any such Rules or Orders; and where any Rules or Orders for regulating or governing any such Gaols or Prisons have already been made, or hereafter shall be made, the same may, at all Times hereafter, be enlarged, altered or amended, as there shall be Occasion, by the respective Courts in *Westminster Hall*, and other the Persons for the Time being respectively authorized by this Act to make and alter the same: And after every making, enlarging, altering or amending thereof, all such Rules or Orders so enlarged, altered or amended, shall be signed by the Judges of each respective Court in *Westminster Hall*, where any such Rules or Orders shall be made, enlarged, altered or amended, and in respect of the Prisons and Prisoners belonging to the said Courts respectively; and in respect to the other Gaols or Prisons, or the Prisoners therein, by the respective Persons for the Time being, hereby before authorized to make, and review or alter such Rules or Orders within their respective Jurisdictions as aforesaid: And Duplicates of every such Table of Fees which shall be made, enlarged, altered or varied, and of all Rules or Orders which shall be hereafter made for regulating any Gaol or Prison in pursuance of this Act, belonging to the said respective Courts in *Westminster Hall*, shall be entered and inrolled on Record in every

Duplicates of
such Orders,
and Tables of
Fees, to be in-
rolled, and en-
tered upon Re-
cord in the pro-
per Courts, &c.

such respective Court, by the proper Officer thereof, without any Fee to be paid for the same; and a like Duplicate of every such Table of Fees, Rules or Orders, which shall be so made, varied, altered or amended, and which shall concern or relate to any other Gaol or Prison, or the Prisoners therein, in that Part of *Great Britain* called *England*, shall, from Time to Time, with all convenient Speed after the making or altering, enlarging or varying thereof, be transmitted to the respective Clerks of the Peace of the several Counties, Ridings, Divisions, Cities or Places, in or for which the same shall be made, altered, enlarged or varied, and shall be by every such respective Clerk of the Peace, entered or registered on the Rolls of the respective Sessions without Fee: and every such Clerk of the Peace shall cause another Copy thereof to be hung up in the Court where every Assize, Great Sessions or Quarter Sessions of the Peace for every such County, Riding, Division, City or Place respectively, within his Jurisdiction, shall be held, there to remain and be inspected as Occasion shall require; and shall also cause another Copy thereof to be transmitted to every Gaoler or Keeper of any Prison, within the Jurisdiction of any such respective Clerk of the Peace; and every such Gaoler or Keeper shall forthwith, after the Receipt of any such Table of Fees, Rules or Orders, cause the same to be hung up in some open or publick Room or Place, and in a conspicuous Manner, in his Gaol or Prison; and it shall be incumbent on every such Gaoler or Keeper, to take care that the same shall, from Time to Time, be kept up there and preserved, so as that the Prisoners in his Gaol or Prison may have free and easy Resort thereto, at seasonable Times in the Day-time, as Occasion shall require, without paying any Thing for the same.

No. 29.
32 George II.
c. 28.

VII. And be it further enacted by the Authority aforesaid, That the several Courts of Record in *Westminster Hall* aforesaid shall hereafter, in every *Michaelmas* Term, appoint some Day in such Term, to inquire whether such Table of Fees, and such Rules or Orders as aforesaid, are hung up, and remain publick, and easy to be resorted to, in the several Prisons to the said Courts respectively belonging; and whether the same be duly complied with and observed; and shall cause eight Days Notice to be given in every such *Michaelmas* Term to the Prisoners in every of the respective Prisons belonging to the said respective Courts in *Westminster Hall*, of the Time appointed for such Inquiry, and shall inform themselves touching the same in the best Manner they can, and supply and redress whatever they shall find neglected or transgressed.

Courts in Westminster Hall to inquire annually whether such Tables of Fees and Orders are duly hung up and complied with, &c.

VIII. And be it also enacted by the Authority aforesaid, That the Judges and Justices of Assize, Gaol Delivery, and Great Sessions as aforesaid respectively, within their respective Jurisdictions, shall, at all Assizes and Sessions of Gaol Delivery and Great Sessions as aforesaid, which shall hereafter be held by them, make Inquiry whether such Table of Fees, and Rules or Orders as aforesaid, are hung up, and remain pub-

Judges and Justices of Assize, &c. to make a like Inquiry.

No. 29. lick, to be resorted to in the several Gaols or Prisons within
32 George III. their respective Jurisdictions, and whether the same be duly
c. 28. complied with and observed; and shall inform themselves
touching the same in the best Manner they can, and supply and
redress whatever they shall find neglected or transgressed relat-
ing thereto, and shall expressly give in Charge to every Grand
Jury impanelled and sworn before them respectively, to make
Inquiry concerning the same.

Courts at West-
minster, &c. to
enquire con-
cerning Be-
quests to poor
Prisoners, &c.

IX. And be it further enacted by the Authority aforesaid, That the several Courts of *King's Bench*, *Common Pleas*, and *Exchequer*, Judges of Assize, and Justices of Great Sessions, and Justices of the Peace within their respective Jurisdictions, and all Commissioners for charities, do, from Time to Time, use their best Endeavour and Diligence, to examine after and discover the several Gifts, Legacies and Bequests, bestowed or given for the Benefit or Advantage of the poor Prisoners in the several Gaols or Prisons within their respective Jurisdictions; and they are hereby severally authorized within their respective Jurisdictions, to summon, and cause to be brought before them respectively, any Deeds, Wills, Writings, Books of Accounts and Papers, as they shall receive Information of to be in the Custody of any Person within their respective Jurisdictions, and to concern the Premises; and also may summon, and cause to come before them respectively, any Person or Persons who they shall have any just Reason to apprehend may be able to make any Discovery concerning the same; and they are hereby authorized, within their respective Jurisdictions, to examine any such Person or Persons on Oath, in order to get at a true Discovery thereof, and to order and settle the Payment, Recovery and Receipt of any such Gifts, Legacies or Bequests, when so discovered and ascertained, in such easy and expeditious Manner and Way as shall be thought proper by them respectively, that the Prisoners for the future may not be defrauded, but may, without Delay, receive the full Benefit of all such Gifts, Legacies and Bequests, according to the true Intent of the respective Donors thereof.

Table of Be-
nefactions to be
transmitted to,
and registered
by the Clerks of
the Peace, &c.

X. And be it further enacted by the Authority aforesaid, That a List or Table of such Gifts, Legacies and Bequests, for the Benefit of the Prisoners in every Gaol or Prison respectively as aforesaid, shall, after every settling thereof, be transmitted by the Persons hereby authorized to settle the same unto the Clerks of the Peace of the respective Gaol or Prison Places, and shall be registered by them respectively in such Manner Tables of Fees and Orders are herein before directed to be registered by them respectively, without any Fee to be paid for the same; and that a List or Table of such Gifts, Legacies and Bequests, shall be fairly written and transmitted, by order of such Persons as aforesaid, to the Gaoler or Keeper of every Gaol or Prison to which the Gifts, Charities or Bequests therein contained relate, and forthwith after the Receipt thereof shall be hung up by the Gaoler or Keeper,

who shall receive the same, in a conspicuous Manner in some publick Place in his Gaol or Prison, and where the Prisoners in such Gaol or Prison may have free and easy Resort thereto, as Occasion may require, without Fee; and it shall be the Duty of every such Gaoler or Keeper, to take care that every such List or Table of Gifts which shall be transmitted to any such Gaol or Prison, or a true Copy thereof, shall, from Time to Time thereafter, be kept hung up as aforesaid in his respective Gaol or Prison.

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XI. And for the more speedy punishing Gaolers, Bailiffs and others employed in the Execution of Process, for Extortion, or other Abuses in their respective Offices and Places, Be it further enacted by the Authority aforesaid, That upon the Petition, in Term Time, of any Prisoner or Person being, or having been, under Arrest or in Custody, complaining of any Exaction or Extortion by any Gaoler, Bailiff or other Officer or Person, in or employed in the keeping or taking care of any Gaol or Prison or other Place, where any such Prisoner or Person under, or having been under, Arrest or in Custody, by any Process or Action, is or shall have been carried, or in respect of the arresting or apprehending any Person or Persons, by virtue of any Process, Action or Warrant, or of any other Abuse whatsoever committed or done in their respective Offices or Places, unto any of his Majesty's Courts of Record at *Westminster*, from whence the Process issued, (2.) by which any Person who shall so petition was arrested, or under whose Power or Jurisdiction any such Gaol, Prison or Place is; or in Vacation Time to any Judge of any such Courts at *Westminster*, from whence any Process so issued; or to the Judges of Assize, or Justices of Great Sessions, in their respective Circuits; or to the Judge or Judges of any other Court of Record, where any Prisoner or Person being, or having been, under Arrest or in Custody, was arrested or in Custody by Process issued out of, or Action entered in, any such other Court of Record within that Part of *Great Britain* called *England*; and if within the Principality of *Wales*, or County Palatine of *Chester*, then to the Justices at some Great Sessions to be holden for the County in the Principality of *Wales*, or for the County Palatine of *Chester*, where any such Prisoner or Person being, or having been under Arrest or in Custody, was arrested or in Custody, in the said Principality of *Wales*, or County Palatine of *Chester*; every such Court, Judges of Assize, and Justices of Great Sessions, and Judge and Judges of all inferior Courts of Record, are hereby authorized and required respectively, within their several Jurisdictions, to hear and determine the same in a summary Way, and to make such Order thereupon for redressing the

Where Gaolers, &c. shall be guilty of Extortion, the Court, &c. upon Petition of the Prisoners, is to examine into the same in a summary Way, &c.

(2.) If by Abuse of the Process of one Court a promissory Notice is obtained, upon which an Action is brought in another Court, the latter Court cannot interfere in a summary Way under this Clause; *Ex parte Evans*, 2 B. and P. 88.

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Abuses which shall, by any such Petition, be complained of, and for punishing such Officer or Person complained against, and for making Reparation to the Party or Parties injured, as they shall think just, together with the full Costs of every such Complaint; and all Orders and Determinations which shall be thereupon made by any of the said Courts, or any of the said Judges, Justices of Assize, Justices of Great Sessions, Judge or Judges of any such inferior Court as aforesaid respectively, in such summary Way as is herein prescribed, shall have the same Effect, Force and Virtue, and Obedience thereunto may be enforced by the respective Courts, Judges, Justices of Assize, Justices of Great Sessions, Judge or Judges of any such inferior Court, by Attachment, or in any other Manner, as other Orders of the said respective Courts, Judges, Justices of Assize and Great Sessions, Judge or Judges of inferior Courts of Record, may be enforced.

Gaoler to take no other Fees than what shall be allowed in the authenticated Table of Fees.

XII. And be it further enacted by the Authority aforesaid, That no Gaoler or Keeper of any Gaol or Prison or other Person thereto belonging, shall demand, take or receive, directly or indirectly, of any Prisoner or Prisoners, for Debt, Damages, Costs or Contempt, any other or greater Fee or Fees whatsoever for his, her, or their Commitment, or coming into Goal, Chamber Rent there, Release or Discharge, than what shall be mentioned or allowed in the List or Table of Fees which is or shall be settled, inrolled and registered as aforesaid; and that every Sheriff, Under Sheriff, Bailiff of any Liberty, Bailiff, Serjeant at Mace, Gaoler and other Officer and Person as aforesaid, who shall in any wise offend against this Act, shall, for every such Offence against this present Act (over and above such Penalties or Punishments as he or they shall be liable unto by the Laws now in force) forfeit and pay to the Party thereby aggrieved the Sum of fifty Pounds, to be recovered with treble Costs of Suit, by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at Westminster; wherein no Essoin, Protection or Wager of Law, or more than one Imparance shall be allowed.

Debtor charged in Execution for any Sum or Sums not exceeding 100l. &c.

* XIII. And for the Ease and Relief of Prisoners who shall be charged in execution for any Sum or Sums of Money not exceeding in the whole the Sum of one hundred Pounds, and who shall be willing to satisfy their respective Creditors so far as they are able; Be it further enacted by the Authority aforesaid, That from and after the fifteenth Day of June one thousand seven hundred and fifty-nine, if any Person or Persons shall be charged in execution for any Sum or Sums of Money not exceeding in the Whole the Sum

* This Clause favourably construed, so as to serve the Intention of the Act, in 2 Burr. 799, 901. and 4 Burr. 2526; yet Defendants in *qui tam* Actions are not within it; 3 Burr. 1322. This Clause also leaves the Time of bringing remanded Prisoners up again to the Discretion of the Court; whereas 2 Geo. 2. c. 32, s. 9. fixed it to some Time within the first Week of the following Term; 3 Burr. 1393. — (Note in Runnington's Edition of the Statutes.)

of one hundred Pounds, or on which Execution or Executions (3.) there shall at any Time remain due, as shall be made appear by Oath, a Sum or Sums of Money not amounting to above the said Sum of one hundred Pounds, and shall be minded to deliver up to his, her, or their Creditor or Creditors who shall so charge him, her, or them in Execution, all his, her, or their Estate and Effects, for or towards the Satisfaction of the Debt or Debts wherewith he, she, or they shall so stand charged; it shall and may be lawful to and for any such Prisoner, before the End of the first Term which shall be next after any such Prisoner shall be charged (4.) in Execution by his Creditor or Creditors, to exhibit a Petition to any Court of Law, from whence the Process issued upon which any such Prisoner or Prisoners was or were taken and charged in Execution as aforesaid, or to the Court into which any such Prisoner shall be removed by *Habeas Corpus*, or shall be charged in Custody, and shall remain in the Prison thereof, certifying the Cause or Causes of his, her, or their Imprisonment, and not only setting forth in every such Petition a just and true Account of all the Real and Personal Estate, which he, she, or they so petitioning, or any Person or Persons in Trust for him, her, or them, is, was, or were intitled to at the Time of his, her, or their so petitioning, and of all Incumbrances and Charges (if any there be) affecting any such Real or Personal Estate of the Person or Persons so petitioning, but also a just and true Account of all the Real and Personal Estate which any such Prisoner or Prisoners, or any Person or Persons in Trust for him, her, or them, or for his, her, or their Use, was or were interested in, or entitled to, at the Time of his, her, or their first Imprisonment, in the Action in which such Person is charged in Execution, either in Possession, Reversion, Remainder, or Expectancy, to the best of the Belief of every such Prisoner or Prisoners, and so far as his, her, or their respective Knowledge extends concerning the same; and likewise a just and true Account of all Securities wherein any Part of the Estates of any such Prisoner or Prisoners consists, and of all the Deeds, Evidences, Writings, Books, Bonds, Notes and Papers, concerning the same or relating thereto; and the Names and Places of Abode of the Witnesses to all Securities, Bonds, or Notes, and where they are to be respectively met with, so far as his, her, or their Knowledge extends concerning the same: And before any such Petition from any such Prisoner or Prisoners shall be received by any such Court, every such Prisoner or Prisoners shall give or leave, or cause to be given or left, unto and for all and every the Creditor or Creditors at whose Suit any such Pri-

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may exhibit a
Petition to the
Court,

with a Schedule
of his Estate,
&c.

14 Days previ-
ous Notice of
such intended
Petition to be
given to the
Creditor or his
Attorney, at
whose Suit he
is charged in
Execution;

(3.) A Prisoner in Custody under an Attachment for not paying Money is within the Act, as being merely a Civil Remedy; *Rex v. Stokes*, Cowp. 136. It does not seem to have been adverted to, that the Creditor has not the Benefit of the Remedies given in respect to future Effects.

(4.) If a Defendant be arrested on a *ca. sa.* and afterwards escape, and be committed to Prison in the next Term, he may apply the following Term to be discharged; for the Words *charged in Execution* mean being detained within the Walls of the Prison; *Vaughan v. Durnell*, 4 T. R. 367.

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with a Copy of
the Schedule he
intends to deli-
ver into Court.

Affidavit of the
due Service of
such Notice to
be delivered at
the same Time
with the Peti-
tion into Court,
and read open-
ly; and a Rule
to be made up-
on receiving the
Petition, &c.

the Court to
examine into
Matter of
Petition in

soner or Prisoners shall stand charged in Execution as aforesaid, or his, her, or their Executors or Administrators, and at his, her, or their usual Place of Abode, or to or for his, her, or their Attorney or Agent, last employed in any such Action, Suit, Cause or Causes, in case any such Creditor or Creditors, his, her, or their Executors or Administrators, cannot be met with, but not otherwise, fourteen Days at least before any such Petition shall be presented and received, a Notice in Writing, signed with the proper Name or Mark of every such Prisoner or Prisoners, importing therein, That such Prisoner or Prisoners as aforesaid, doth or do intend to petition the Court from whence the Process issued, upon which he, she, or they stand charged in Execution, or into the Prison to which any such Prisoner shall have been removed by *Habeas Corpus*, or shall stand charged in Execution on any Judgment, recovered on any Bill or Declaration filed or delivered in any such Court; and also setting forth in every such Notice or Writing, a true Copy of the Account or Schedule, including the whole Real and Personal Estate of the Person or Persons so designing to petition, which he, she, or they doth or do intend to deliver into any such Court (other than and except the necessary Wearing Apparel and Bedding of the Prisoner or Prisoners, and his, her, or their Family, and the Tools or Instruments of his, her, or their Trade or Calling, not exceeding ten Pounds in Value in the Whole); and an Affidavit of the due Service of every such Notice shall be delivered with every such Petition, at the Time of presenting thereof, and openly read in the Court to which any such Petition shall be addressed: And if such Court shall thereupon be satisfied of the Regularity of every such Notice, such Petition shall be received, and such Court shall thereupon, by Order or Rule of the same Court, cause the Prisoner or Prisoners so petitioning to be brought up to such Court, on some certain Day in such Order or Rule to be specified, and the Creditor, or several Creditors, at whose Suit any such Prisoner or Prisoners shall stand charged in Execution as aforesaid, his, her, or their Executors or Administrators, to be summoned to appear personally, or by his, her, or their Attorney in such Court, at some certain Day to be specified in such Rule or Order for that Purpose: And if any Creditor or Creditors of any such Prisoner or Prisoners, who shall be so summoned, his or her Executors or Administrators, shall appear in Person, or by his, her, or their Attorney; or if any such Creditor or Creditors, his or her Executors or Administrators, shall refuse or neglect to appear in Person, or by his, her, or their Attorney, then upon Affidavit of the due Service of such Rule or Order on him, her, or them, or his, her, or their Attorney, if any such Creditor or Creditors, his, her, or their Executors or Administrators, cannot be met with, such Court shall in a summary Way examine into the Matter of every such Petition, and hear what can or shall be alleged on either Side for or against the Discharge of any such Prisoner or Prisoners who shall so petition; and upon such Examination every such Court is hereby required to administer or tender to the Prisoner or Prisoners

respectively who shall so petition, and give such previous Notice thereof as herein before is directed, an Oath to the Effect following. That is to say,

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and administer the Oath following to the ^{a summary way,} Prisoner.

I A. B. do swear in the Presence of Almighty God, That the Account by me set forth in my Petition presented to this Honourable Court, doth contain a full and true Account of the Real and Personal Estate, Debts, Credits and Effects whatsoever, which I, or any in Trust for me at the Time of my first Imprisonment in this Action, or at any Time since had, or was in any respect intitled to, in Possession, Reversion or Remainder (except the Wearing Apparel and Bedding of or for me and my Family, and the Tools or Instruments of my Trade or Calling, not exceeding ten Pounds in Value in the Whole) and also an Account how much of my Real and Personal Estate, Debts, Credits or Effects, hath since been disposed of, released or discharged, and how, to whom, and on what Consideration, and for what Purpose, and how much thereof I or any Person or Persons in Trust for me have, or at the Time of my presenting my said Petition to this Honourable Court had, or which I am or was, or any Person in Trust for me, or for my Use, is any ways interested in or intitled to, in Possession, Reversion, Remainder, or Expectancy, and also a true Account of all Deeds, Writings, Books, Papers, Securities, Bonds, and Notes relating thereto, and where the same respectively now are, to the best of my Knowledge and Belief, and what Charges are now affecting the real Estate I am now seised of or intitled to (if any such Prisoner or Prisoners shall be then seised of any real Estate) and that I have not, at any Time before or since my Imprisonment, directly or indirectly sold, leased, assigned, mortgaged, pawned, or otherwise disposed of or made over in Trust for myself, or otherwise than is mentioned in such Account, any Part of my Messuages, Lands, Tenements, Estates, Goods, Stock, Money, Debts, or other real or personal Estate, whereby to have or accept any Benefit, Advantage, or Profit, to myself or my Family, or with any View, Design, or Intent to deceive, injure, or defraud any of my Creditors to whom I am indebted. *So help me God.*

The Oath.

And in case any Prisoner or Prisoners as aforesaid shall in open Court take the said Oath, such Court in which any such Oath as aforesaid shall be taken, may then immediately order the Messuages, Lands, Tenements, Goods and Effects contained in such Account, or so much of them as may be sufficient to satisfy the Debt or Debts wherewith any such Prisoner or Prisoners shall stand charged in Execution, and the Fees due to the Warden, Marshal, or Keeper of the Gaol or Prison from which any such Prisoner was brought; to be, by a short Indorsement on the Back of such Petition, and to be signed by the Prisoner, assigned and conveyed to the Creditor or Credi-

Court may thereupon order an Assignment to be made, on the Back of the Petition, of the Prisoner's Estate and Effects and conveyed to the Creditor, &c.

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Court there-
upon to make a
Rule for Dis-
charge of the
Prisoner, &c.

tors who shall have charged any such Prisoner in Execution (if more than one) his, her, or their Heirs, Executors, Administrators and Assigns, for the Benefit of him, her, or them, who shall have so charged any such Prisoner in Execution (subject nevertheless to all prior Incumbrances affecting the same); and the Estate, Interest, or Property of all Messuages, Lands, Goods, Debts, Estates and Effects which shall belong to any such Prisoner, shall by such Assignment and Conveyance as aforesaid, be vested in the Person or Persons to whom such Assignment and Conveyance shall be made, according to the Estate and Interest such Prisoner or Prisoners had therein respectively; and the Creditor or Creditors to whom any such Assignment and Conveyance shall be made, shall and may take Possession of, and sue in his, her, or their Name or Names for the Recovery thereof, in like Manner as Assignees of Commissioners of Bankrupts can or may sue for the Recovery of the Estate and Effects of Bankrupts which shall be assigned and conveyed to them; and no Release of any such Prisoner or Prisoners, his or her Executors or Administrators, or any Trustee for him, her, or them, subsequent to such Assignment and Conveyance, shall be pleadable, or be allowed of in bar of any Action or Suit which shall be commenced by any such Assignee or Assignees of any such Prisoner or Prisoners, for the Recovery of any of his, her, or their Estate or Effects; and upon every such Assignment and Conveyance being executed by any such Prisoner or Prisoners, he, she, or they shall be discharged out of Custody by Rule or Order of such Court, which shall be petitioned by any such Prisoner; and such Rule or Order being produced to, and a Copy thereof being left with, any such Sheriff, Gaoler or Keeper of any Prison as aforesaid, shall be a sufficient Warrant to him to discharge every such Prisoner or Prisoners, if charged in Execution, or detained for the Causes mentioned in his, her, or their respective Petition, and no other: And every such Sheriff, Gaoler or Keeper is hereby required, on having such Order produced to him, and a Copy thereof left with him, to discharge and set at Liberty forthwith every such Prisoner and Prisoners who shall be ordered as aforesaid to be discharged, without taking any Fee, or detaining him, her, or them in respect of any Demand of any such Sheriff, Warden, Marshal, Gaoler or Keeper, for or in respect of Chamber Rent or Lodging, or otherwise; or for or in respect of any Fees theretofore claimed or due to any such Sheriff, Gaoler or Keeper, or any employed by or under him or them: And no such Sheriff, Gaoler or Keeper shall afterwards be liable to any Action of Escape, or other Suit or Information on that Account, or for what he shall do in pursuance of this Act; and the Person or Persons to whom the Estate and Effects of any such Prisoner or Prisoners shall be assigned and conveyed, shall with all convenient Speed sell and dispose of the Estate and Effects of every such Prisoner which shall be so assigned and conveyed, and shall divide the net Produce of all such Estates

and Effects amongst the Creditors of every such Prisoner and Prisoners, if more than one, who shall have charged any such Prisoner in Execution, before the Time of such Prisoner's Petition to be discharged shall have been presented, rateably and in proportion to their respective Debts; but in case the Person or Persons at whose Suit any such Prisoner or Prisoners stood charged in Execution as aforesaid, shall not be satisfied with the Truth of any such Prisoner's Oath, and shall either personally, or by his, her or their Attorney, if he, she, or they cannot personally attend, and Proof shall be made thereof to the Satisfaction of any such Court as aforesaid, desire further Time to inform him, her, or themselves of the Matters contained therein, any such Court may remand any such Prisoner or Prisoners, and direct him, her or them, and the Person or Persons dissatisfied as aforesaid with such Oath, to appear either in Person, or by his, her, or their Attorney, on some other Day to be appointed by such said Court, some Time at furthest within the first Week of the Term next following the Time of such Examination, but sooner if any such Court shall so think fit; and all Objections which shall be made as to the Insufficiency in point of Form against any Prisoner's Schedule of his Estates and Effects, shall be only made the first Time any such Prisoner shall be brought up; and if at such second Day which shall be appointed, the Creditor or Creditors dissatisfied with such Oath shall make Default in appearing, either in Person, or by his, her, or their Attorney, or in case he, she, or they shall appear, if he, she, or they shall be unable to discover any Estate or Effects of the Prisoner omitted in the Account set forth in such his or her Petition, then and in any such Case such Court shall, by Rule or Order thereof, immediately cause the said Prisoner or Prisoners to be discharged, upon such Prisoner or Prisoners executing such Assignment and Conveyance of his or her Estates and Effects, in Manner as Assignments and Conveyances of Prisoners Estates and Effects are herein before directed to be made, unless such Creditor or Creditors who shall have charged any such Prisoner or Prisoners in Execution as aforesaid, his, her, or their Executors or Administrators, doth or do insist upon such Prisoner or Prisoners being detained in Prison, and shall agree by Writing signed with his, her, or their Name or Names, Mark or Marks, or under the Hand of his, her, or their Attorney, in case any such Creditor or Creditors, his, her, or their Executors or Administrators shall be out of *England*, to pay and allow weekly a Sum not exceeding two Shillings and four Pence, as any such Court shall think fit, unto the said Prisoner, to be paid every *Monday* in every Week, so long as any such Prisoner shall continue in Prison in Execution at the Suit of any such Creditor or Creditors; and in every such Case every such Prisoner and Prisoners shall be remanded back to the Prison or Gaol from whence he, she, or they was or were so brought up, there to continue in Execution; but if any Failure shall at any Time be made in the Payment of the weekly Sum which shall be ordered by any such Court to be

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Creditor not appearing the second Day, or not making a further Discovery;

Court to make a Rule for Discharge of the Prisoner;

unless the Creditor insist upon his Detention, and covenant to allow him 2s. 4d. per Week.

But upon Failure at any Time in the Payment there-

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of, the Prisoner
upon Applica-
tion to the
Court to be
discharged.

paid to any such Prisoner, such Prisoner, upon Application in Term Time to the Court where the Suit in which any such Prisoner shall be charged in Execution was commenced, or shall have been carried on, or in the Prison of which Court any such Prisoner shall stand committed on any *Habeas Corpus*, or in Vacation Time, (5.) to any Judge of any such Court, may by the Order of any such Court or Judge be discharged out of Custody on every such Execution; Proof being made before such Court, or Judge, on Oath of the Non-payment for any Week of the Sum of Money ordered and agreed to be weekly paid; but every such Prisoner and Prisoners, before he, she, or they shall be so discharged out of Custody by any such Rule or Order, shall execute an Assignment and Conveyance of his, her, or their Estates and Effects, in Manner herein before directed: And if any Prisoner who shall petition or apply for his or her Discharge under this Act, shall refuse to take the said Oath herein before directed to be taken, or taking the same shall afterwards be detected before any such Court or Judge of Falsity therein, or shall refuse to execute such Assignment and Conveyance of his, her, or their Estates and Effects as aforesaid, as herein before is required to be made by him, her, or them respectively, he, she, or they shall be presently remanded and continue in Execution.

Where more
Creditors than
one insist on
the Prisoner's
Detention, they
are to pay him
each not ex-
ceeding 1s. 6d.
per Week.

XIV. Provided always, and be it further enacted, That where more Creditors than one shall charge any Prisoner or Prisoners in Execution, and shall desire to have such Prisoner or Prisoners detained in Prison, each and every such Creditor and Creditors shall only respectively pay such weekly Sum of Money, not exceeding one Shilling and Sixpence a Week, on every *Monday* in every Week, to or for such respective Prisoner, as the Court before whom any such Prisoner or Prisoners shall be brought up to be discharged shall at the Time of his, her, or their being remanded, on such Note for the Payment of the weekly Sum ordered to be paid being given, direct and appoint.

Prisoner charged
in Execution
in County and
other Gaols,
distant from
Westminster, to
proceed in like
Manner by Pe-
tition and Affi-
davit;

XV. And be it further enacted by the Authority aforesaid, That from and after the said fifteenth Day of *June*, one thousand seven hundred and fifty-nine, where any Prisoner or Prisoners shall be charged in Execution in any County Gaol, or in any other Gaol or Prison, above the Space of twenty Miles distant from *Westminster-Hall*, or the Court or Courts out of which the Execution or Executions shall be issued out against any such Prisoner or Prisoners, then upon Petition being made by any such Prisoner or Prisoners to the Court from whence any such Execution or Executions against any such Prisoner or Prisoners issued, or in the Prison of which Court any such Prisoner shall be and stand charged in Execution, in the like Form and Manner as the Petitions herein before mentioned of Prisoners

(5.) An Order cannot be made by a Judge in Term, though Summonses were taken out in Execution, and the Order only delayed until the Beginning of Term by an Irregularity in the Affidavits; *Huskins v. Morris*, 1 B. and P. 92.

are directed to be made, and on an Affidavit to the Purport as Affidavits are herein before directed to be made in the Case of Prisoners in Gaol not above twenty Miles distant from the Court out of which the Execution against such Prisoner issued, being made and left with such Petition, such Court (on being satisfied with the Truth of such Affidavit) is hereby authorized and required to make a Rule or Order to cause the Prisoner or Prisoners so petitioning, to be brought to the next Assizes which shall be holden for the County or Place where he, she, or they shall be imprisoned, if the same shall be within that Part of Great Britain called England; and if within the Principality of Wales, or County Palatine of Chester, then to cause such Prisoner or Prisoners to be brought to the next Great Sessions to be holden for the County in Wales, or County Palatine of Chester, in which any such Prisoner or Prisoners shall be imprisoned; and the Expence of bringing every such Prisoner to any such Assizes, not exceeding one Shilling a Mile, shall be paid to the Gaoler, Keeper, or Officer who shall bring any such Prisoner to any such Assizes or Great Sessions, in Obedience to any such Rule or Order as aforesaid served on him, out of every such Prisoner's Estate or Effects, if the same shall be sufficient to pay such Expence; and if not, then such Expence shall be paid by the Treasurer of the County, Riding, Division or Place in which any such Prisoner shall be imprisoned, out of the Stock of the County, Riding, Division or Place, as the same shall be allowed, directed or ordered, by any such Court from which any such Execution shall have been issued against any such Prisoner or Prisoners, or in the Prison of which any such Prisoner shall be, by one or more of the Judge or Judges of Assize, Justice or Justices of Great Sessions: And the Creditor or several Creditors, his, her, or their Executors or Administrators, at whose Suit any such Prisoner or Prisoners shall stand charged in Execution as aforesaid, shall by Rule or Order of the Court from whence the Process issued, be summoned to appear at the said next Assizes or Great Sessions, if such Creditor or Creditors, his, her, or their Executors or Administrators can be met with; and if not, then the Attorney last employed for such Creditor or Creditors shall be summoned to appear there; and a Copy of every such Rule or Order shall be served on every of such Creditor or Creditors, his, her, or their Executors or Administrators, or be left at his, her, or their Dwelling-house or usual Place of Abode, or with his, her, or their Attorney last employed as aforesaid, fourteen Days at least before the holding of any such Assizes or Great Sessions; and on an Affidavit of such Service, thereof being laid before the Judge or Judges of Assize, Justice or Justices of Great Sessions as aforesaid, such Judge or Judges of Assize, Justice or Justices of Great Sessions respectively, on being satisfied with the Truth of such Affidavit, is and are hereby required to appoint a Time for hearing the Matter upon every such Petition as aforesaid, on some certain Day and Time, on the Crown Side of every such Court or Great Sessions, during

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and the Court to make a Rule thereupon for his being brought up to the next Assizes, &c.

1s. per Mile to be paid to the Gaoler for his Expences out of the Prisoner's Estate;

or by the Treasurer of the County.

Creditors to be summoned,

and a Copy of the Rule served on them;

and upon Affidavit made of such Service, the Court to appoint a Time for hearing the Matter of the Petition;

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and the Creditors appearing thereto, or not, Proof being made of their being duly served with the Notice, and Copy of the Schedule of the Prisoner's Estate, the Court to proceed therein in a summary Way;

and administer the Oath to the Prisoner;

and make such Order in the Premises as shall seem meet, and proceed as aforesaid concerning the Prisoner's Discharge.

Order to stand good, and be entered upon Record.

Prisoner refusing to deliver up his Estate and Effects to satisfy his Creditors,

such Assizes or Great Sessions; and upon the Appearance there of the Creditor or Creditors who shall be summoned in pursuance of this Act, his, her, or their Executors or Administrators, or in Default of the Appearance, either in Person or by Attorney, of the Party or Parties who shall have been summoned so to appear, then on Proof of his, her, or their being duly served with the Notice hereby required to be given, and a Copy of the Account of the real and personal Estate of the Prisoner or Prisoners desiring to be discharged being comprised in such Notice, and also of the Rule of such Court for his, her, or their Appearance at such Assizes or Great Sessions having been duly served as herein before is directed, the Judge or Judges of such Assizes or Great Sessions respectively, as the Case shall happen to be, shall there in a summary Way examine into the Matter of every such Petition, and hear what can or shall be alleged on either Side, for or against the Discharge of the Prisoner or Prisoners so petitioning; and upon every such Examination such Judge and Judges of Assize and Great Sessions respectively, or any one of them, is and are hereby impowered and required respectively, within their respective Jurisdictions, to administer or tender to every such Prisoner the same Oath as herein before is directed and appointed to be taken, by any Prisoner, before the Judges of the Court out of which the Process, upon which any such Prisoner was taken in Execution, issued; and such said Judge or Judges of Assize, Justice or Justices of Great Sessions respectively, or any one of them, is and are hereby respectively authorised and required to make such Order in the Premises, as to him or them shall seem meet, and to proceed in the same Manner concerning the Discharge of any Prisoner or Prisoners in any Prison within their respective Jurisdictions, and to give the same Judgment, Relief and Directions relating thereto, as any Court out of which any Process shall issue against any such Prisoner as aforesaid, is herein before impowered and directed to do: And every Order which shall be made in the Premises by any such Judge or Judges of Assize or Great Sessions, shall be as valid and effectual as if the same had been made in the Court out of which the Process issued on which any such Prisoner was charged in Execution; and the same shall be made a Record of the Proceedings at such Assizes or Great Sessions, as the Case shall happen to be, and a Copy thereof shall from thence be transmitted to the Court from whence the Execution against the Prisoner or Prisoners discharged issued, or was awarded, signed by the Judge or Judges of Assize or Great Sessions, to be a Record of the said Court, and to be kept as such amongst the other Records thereof.

XVI. And whereas it sometimes happens that Persons who are Prisoners in Execution in Gaol for Debt or Damages, will rather spend their Substance in Prison, than discover and deliver up the same towards satisfying their Creditors their just Debts, or so much thereof as such Substance will extend to pay; Be it therefore further enacted, That if any Prisoner

ner now committed to any Prison or Gaol, and charged in Execution for any Debt or Damages not exceeding the Sum of one hundred Pounds, besides Costs of Suit, shall not, on or before the twenty-ninth Day of *September* one thousand seven hundred and fifty-nine, make Satisfaction to the Creditor or Creditors, his, her, or their Executors or Administrators, at whose Suit any such Prisoner shall be so charged in Execution for such Debt or Damages, and the Costs of such Suit; or if any Prisoner, who after the said fifteenth Day of *June* one thousand seven hundred and fifty-nine, shall be committed or charged in Execution as aforesaid, make Satisfaction to his, her, or their Creditor or Creditors, who shall charge any such Prisoner in Execution as aforesaid, his, her, or their Executors or Administrators for such Debt, Damages and Costs; then, and in any of the said Cases, any such Creditor or Creditors, his, her, or their Executors or Administrators, is and are hereby authorized and empowered to require every such respective Prisoner or Prisoners, on giving twenty Days Notice in Writing to him or her respectively, that such Creditor or Creditors, his, her, or their Executors or Administrators, design to compel any such Prisoner to give into the Court at Law, from which the Writ or Process issued on which any such Prisoner is or shall be charged in Execution as aforesaid, or into the Court in the Prison of which any such Prisoner hath been or shall be removed by *Habeas Corpus*, or shall remain or be charged in Execution, within the first seven Days of the Term which shall next ensue the Expiration of the said twenty Days, in respect to any Prisoner charged in any of the Prisons belonging to any of the Courts in *Westminster Hall*; and at the second Court which shall be held by any such other Court of Record after the Expiration of the said twenty Days, in respect to any Prisoner charged in any Prison belonging to any such other Court; and where any such Prisoner is or shall be charged in Execution, in any County Gaol, or other Gaol or Prison, above the Space of twenty Miles distant from *Westminster Hall*, or the Court or Courts out of which the Writ or Process on which any such Prisoner is or shall be so charged in Execution issued, or shall issue; then to give in upon Oath, at the Assizes or Great Sessions as aforesaid, and on the Crown Side thereof, which shall be held for the County or Place in the Prison of which any such Prisoner shall be, next after the Expiration of such twenty Days from the Time of giving any such Notice as aforesaid to any such Prisoner, a true Account in Writing, and to be signed with the proper Name or Mark of every such Prisoner, of all the Real and Personal Estate of such Prisoner, and of all Incumbrances affecting the same, to the best of the Knowledge and Belief of such Prisoner, in order that the Estate and Effects of such Prisoner may be divested out of him or her, and may by the Court, Judge or Judges, Justice or Justices as aforesaid, be ordered to be assigned and conveyed, in Manner and for the Purposes hereinafter declared: And every such Creditor or Creditors as aforesaid, who shall require

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Creditors may compel such Prisoner to be brought up and deliver into Court a Schedule of his Estate and Effects, and the Incumbrances affecting the same, upon Oath; giving the Prisoner 20 Days' Notice of such Intention, &c.

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any such Prisoner to be brought up as aforesaid, for the Purpose aforesaid, shall also give twenty Days like Notice in Writing, of such his, her, or their Intention, to require any such Prisoner to be brought up as aforesaid, to discover and deliver up his or her Estate as aforesaid, to all and every other Creditor and Creditors of every such Prisoner, at whose Suit any such Prisoner shall be detained or charged in Custody in any such Gaol or Prison, if such Prisoner shall be there detained in Custody, or charged in Execution at the Suit of any other Creditor or Creditors, besides the Creditor or Creditors giving such Notice as aforesaid, if such other Creditor or Creditors can be found out or met with, and if not, then to the several Attornies last employed in the respective Actions or Suits, in which any such Prisoner or Prisoners shall be so detained or charged in Custody by any such other Creditor or Creditors of such Prisoner; and shall likewise give a like Notice in Writing to the Sheriff or Sheriffs, Gaoler or Keeper of the Gaol or Prison in which any such Prisoner or Prisoners shall be detained in Custody, or committed or charged in Execution as aforesaid; of such his or her Intention to have any such Prisoner so brought up, and to require such Sheriff or Sheriffs, Gaoler or Gaolers respectively, to bring up every such Prisoner accordingly: (6.) And every such Notice which shall be so given to any such Sheriff or Sheriffs, Gaoler or Gaolers, shall be so given to him or them respectively, twenty Days at least before the Time appointed for any such Prisoner to be so brought up: and thereupon every such Sheriff or Sheriffs, Gaoler or Keeper respectively, to whom any such Notice as aforesaid shall be so given, shall at the Costs of such Creditor or Creditors, his, her, or their Executors or Administrators, cause every such Prisoner to be brought, as by such Notice in Writing shall be required, to such Court, Assizes or Great Sessions as aforesaid, together with a Copy or Copies of his or her respective Detainer or Detainers there; and if any such Sheriff or Sheriffs, Gaoler or Keeper on any such Notice in Writing being given to him or them as aforesaid, and Tender being made to him or them, by or on the Behalf of any such Creditor or Creditors aforesaid, of reasonable Charges, not exceeding one Shilling a Mile, to bring up the Prisoner or Prisoners required as aforesaid, to be so brought up to any such Court, Assizes or Great Sessions as aforesaid, shall neglect or refuse to bring there the Prisoner or Prisoners so required to be brought there as aforesaid, and at the Time he or she shall be so required to be brought there, together with a Copy of his, her, or their Detainer or Detainers in any such Gaol or Prison; every such Sheriff and Sheriffs, Gaoler and Keeper, who shall so offend in the Premises, shall

(6.) A Prisoner who had applied to be discharged, and having delivered in a Paper by way of Schedule, declaring that he had no Effects, and remanded upon the Undertaking of the Plaintiff for the Payment of his Groats, cannot be brought up a second Time under this Clause at the Instance of the Plaintiff, for the Purpose of amending his Schedule, and assigning Property before concealed, even with his own Consent; *Hutchins v. Hesketh*, 1 B. and P. 113.

for every such Offence forfeit and pay the Sum of twenty Pounds, to be recovered by the Party aggrieved by Action of Debt, Bill or Information, in any of his Majesty's Courts of Record at *Westminster*, if any such Offence shall be committed out of the said Principality of *Wales*, or County Palatine of *Chester*; and if any such Offence shall be committed in the Principality of *Wales*, or County Palatine of *Chester*, then in some Court of Record in the said Principality of *Wales*, or County Palatine of *Chester*, within the Jurisdiction of which any such Offence shall be so committed, together with treble Costs of Suit.

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XVII. And be it further enacted by the Authority aforesaid, That every Prisoner charged, or who shall be charged, in Execution as aforesaid, and who in pursuance of this Act shall, at the Desire of any of his, her, or their Creditor or Creditors, his, her, or their Executors or Administrators, be brought up to any such Court, Assizes, or Great Sessions as aforesaid, shall, on Proof being there first made of such Notices as are herein before directed to be given, having been given, deliver in there in open Court, upon Oath, within the Time herein before for that Purpose prescribed, a full, true and just Account, Disclosure and Discovery, in Writing, of the Whole of his or her Real and Personal Estate, and of all Books, Papers, Writings and Securities, relating thereto, and also of all Incumbrances then affecting the same, and the respective Times when made, to the best of his or her Knowledge and Belief (other than and except the necessary Wearing Apparel and Bedding of such Prisoner, and his or her Family, and the necessary Tools or Instruments of his or her respective Trade or Calling, not exceeding the Value of ten Pounds in the whole) which Account shall be subscribed with the proper Name or Mark of the Prisoner respectively, who shall so deliver in the same: and on delivering in of any such Account, the Estate and Effects of every such Prisoner shall be assigned and conveyed by such Prisoner respectively, by a short Indorsement on the back of every such Account as shall be so delivered in, to such Person or Persons as the Court, Judge or Judges, Justice or Justices, in which, or to whom, any such Account shall be so given in, shall order or direct, in Trust, and for the Benefit of the Creditor or Creditors, who shall have required any such Prisoner to be brought up as aforesaid, and of such other Creditor or Creditors (if any) of every such respective Prisoner at whose Suit or Suits any such Prisoner shall be charged in Custody, or in Execution in any such Prison or Gaol, and who shall, by any Memorandum or Writing to be signed by such Creditor or Creditors respectively, before any such Conveyance or Assignment shall be made, consent to any such Prisoner's being discharged out of Gaol or Prison, at his, her, or their Suit or Suits, and also agree to take or accept a proportionable Dividend of such Prisoner's Estate and Effects, with the Creditor or Creditors who shall have

Prisoner, upon Proof of due Notice as aforesaid having been given him, is to deliver in, upon Oath, to the Court a Schedule of his Estate and Effects, and signed by him;

and is to assign and convey the same in Trust, for the Benefit of his Creditors,

they agreeing to his Discharge, and to accept a proportionable Dividend of his Effects;

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but if any shall refuse to agree thereto, then the same to be in Trust for the Creditors, only requiring the Prisoner to be brought up for the Purpose aforesaid.

Overplus remaining after all Charges, to be paid to the Prisoner.

Prisoner complying, to the Satisfaction of the Court, to be set at Liberty;

paying for his Discharge Fees 2s. 6d.

Future Effects of the Prisoner liable to Debts unsatisfied;

and no Advantage to be taken of the Statute of Limitation, unless he was inti-

required any such Prisoner to be brought up as aforesaid; and if there shall be no other Creditor or Creditors as aforesaid of such Prisoner, or there being any such, if such other Creditor or Creditors as aforesaid shall not agree in Writing to discharge such Prisoner, and accept such proportionable Dividend as aforesaid of the Estate and Effects of any such Prisoner; then in Trust for the Creditor or Creditors only who shall require any such Prisoner to be brought up for the Purpose aforesaid: And by such Assignment and Conveyance as aforesaid, all the Prisoner's Estate and Effects shall be vested in the Creditor or Creditors to whom the same shall be assigned and conveyed in Trust as aforesaid; and if any Overplus shall remain of any such Prisoner's Estate, after Payment of the Debt, or Damages and Costs, which shall be due to any Creditor or Creditors respectively at whose Suit or Suits any such Prisoner as aforesaid, shall, in pursuance of this Act, be discharged out of Gaol or Prison, on delivering up his or her Estate and Effects as aforesaid, and all reasonable Charges expended in or by Means of getting in of such Estate or Effects, the same shall be paid to such Prisoner, his or her Executors, Administrators or Assigns: And upon every such Discovery, Assignment and Conveyance, being made and executed by any such Prisoner to the Satisfaction of the Court, Judge or Judges of Assize, Justice or Justices of Great Sessions, before whom the same shall be respectively made, every such Prisoner and Prisoners shall, by such Court, Judge or Judges, Justice or Justices, be discharged and set at Liberty, in the Actions and Charges, at the Suit of the Creditor or Creditors, his, her, or their Executors or Administrators, who shall require any such Prisoner to be so brought up, and also in the Actions and Charges of every other Creditor of any such Prisoner, his, her, or their Executors or Administrators, who shall sign any such Consent as aforesaid, for any such Prisoner's Discharge, with the same Benefit of making use of such his or her Discharge, as is herein-before provided for Prisoners seeking, and who shall obtain their Discharge under the Provisions contained in the former Part of this Act; and no greater Fee than two Shillings and six Pence in the whole, shall be paid or taken for any such Discharge, by all or any Officer or Officers of any such Courts, Assizes, or Great Sessions; and no Stamp shall be necessary on any such Assignment and Conveyance as aforesaid, or any Rule or Order which shall be made for any such Discharge; but all the future Effects of every such Prisoner (other than and except the necessary Wearing Apparel and Bedding of such Prisoner, and his or her Family, and the necessary Tools or Instruments of his or her respective Trade or Calling) shall be and remain liable to satisfy his or her Debts, if the same shall not be fully paid from his or her Estate which shall be assigned and conveyed as aforesaid; and no Advantage shall be had or taken in any Action or Suit which shall be hereafter commenced against any such Prisoner, his or her Heirs, Executors or Administrators, for that the

Cause of Action did not accrue within six Years next before the commencing of any such Action or Suit, unless such Prisoner was intituled to take such Advantage before he or she stood charged in Custody by virtue of the original Suit or Action; and in any such Case the same may be pleaded by any such Prisoner, his or her Heirs, Executors or Administrators: And if any Prisoner charged, or who shall be charged in Execution, in any Prison or Gaol, and who shall be required as aforesaid to be brought up to any such Court, Assizes, or Great Sessions as aforesaid, shall neglect or refuse to deliver in and subscribe such just and true Account of his or her whole Estate and Effects in any such Court, or at any such Assizes or Great Sessions as aforesaid, as the Case may happen to be, within the Time herein before limited or appointed for the doing thereof, or within sixty Days then next following, without offering and making appear some just Excuse for every such Neglect or Refusal, to be allowed of by the Court, Judge or Judges of Assize, Justice or Justices of Great Sessions as aforesaid, or who shall refuse to assign or convey his or her Estate and Effects, according to the Order of any such Court, Judge or Judges, Justice or Justices as aforesaid; he or she so offending in any of the said Cases, and who shall be convicted of any such Offence upon any Indictment found against him or her, shall thereupon have Judgment for Transportation pronounced against him or her, and shall be transported according to the Laws made and now in force for Transportation of Felons, to some of his Majesty's Colonies or Plantations in *America*, for the Term of seven Years: And if any such Prisoner shall deliver in any false or untrue Account of his or her Estate or Effects, or shall designedly conceal, and not insert in the Account he or she shall deliver in and subscribe as aforesaid, any Books, Papers, Securities, or Writings, relating to his or her Estate and Effects, with Intent to defraud his or her Creditor or Creditors, and shall be thereof convicted on any Indictment found against him or her in respect thereof; he or she so offending and being convicted as aforesaid thereof, shall suffer the Pains and Penalties which by Law are to be inflicted on any Person convicted of wilful Perjury.

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tled thereto before he stood charged in Custody on the original Suit.

Prisoner neglecting or refusing to deliver in a Schedule of his Estate and Effects, or to make an Assignment and Conveyance thereof,

to be transported for 7 Years;

and delivering in a false Account,

to suffer the Pains and Penalties of wilful Perjury.

XVIII. Provided also, and be it further enacted by the Authority aforesaid, That if any Person who shall take any Oath as by this Act is required to be taken, shall, upon any Indictment for Perjury, be convicted by his, her, or their own Confession, or by Verdict of twelve lawful Men; the Person so convicted shall suffer the Pains and Forfeitures which by Law are to be inflicted on any Person convicted of wilful Perjury; and shall likewise be liable to be taken on any Process *de novo*, and charged in Execution for the said Debt, in the same Manner as if he or she had not been discharged, or not taken or charged in Execution before, and shall never after have the Benefit of this Act: any Thing herein before contained to the contrary notwithstanding.

Persons convicted of Perjury, to suffer in like Manner, &c.

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If the Prisoner's Effects shall not satisfy his Debt, and Warden's Fees, &c. Warden to receive only a proportional Dividend with the other Creditors.

XIX. Provided likewise, and it is hereby further enacted, That if the Effects of any Prisoner or Prisoners, which shall be assigned and conveyed in pursuance of this Act, shall not extend to satisfy the whole Debt due to the Creditors as aforesaid of the Prisoner who shall be so discharged, and the Fees due to the Warden, Marshal or Gaoler, from any such Prisoner; then such Warden, Marshal or Gaoler, shall only receive a proportionable Dividend from such Prisoner's Estate, in respect of such Fees, *pro Rata* with the other Creditors as aforesaid of such Prisoner or Prisoners.

XX. Provided further, and be it hereby also enacted, That the Prisoner or Prisoners who shall be so discharged by virtue of this Act, shall never after be arrested for the same Debt or Debts; nor shall any Action of Debt be brought against him, her, or them, on any such Judgment, unless he, she, or they shall, under this Act, be convicted of wilful Perjury; but notwithstanding any Discharge obtained by virtue of this Act for the Person of any such Prisoner or Prisoners, the Judgment obtained against every such Prisoner or Prisoners shall continue and remain in Force, and Execution may at any Time be taken out thereon, against the Lands, Tenements, Rents or Hereditaments, Goods or Chattels of any such Prisoner or Prisoners, other than and except the necessary Wearing Apparel and Bedding for him, her, or themselves and Family, and the necessary Tools for the Use of his, her, or their Trade or Occupation, not exceeding ten Pounds in Value in the Whole, as if he, she, or they had never been before arrested, taken in Execution, and released out of Prison, by virtue of, or under this Act.

Assignees may compound with the Creditors in full Discharge of their Debts;

and submit Disputes relating to the Prisoner's Estate and Debts, &c. to Arbitration, &c.

XXI. And be it further enacted by the Authority aforesaid, That any Assignee or Assignees to whom, by virtue of this Act, the Estate or Effects of any Prisoner or Prisoners discharged by this Act shall be assigned, is and are hereby empowered to make Composition with any Debtors or Accountants to such Prisoner or Prisoners, where the same shall appear necessary or reasonable, and to take such reasonable Part of any Debt due, as can, upon any such Composition, be gotten, in full Discharge of such Debt or Account; and also to submit any Difference or Dispute concerning any Part of any such Prisoner's Estate or Effects, or by Reason or Means of any Matter, Cause or Thing relating thereto, or to such Prisoner or Prisoners, or in respect of any Debt claimed to be due to such Prisoner or Prisoners, to the final End and Determination of Arbitrators to be chosen by the said Assignee or Assignees, and the Party or Parties with whom any such Difference shall be; and if such Arbitrators cannot agree in the same, then to submit the same to the Determination of any Umpire to be chosen by them, or otherwise to settle and agree the Matter in Difference or Dispute between them, in such manner as such Assignee or Assignees shall think fit, and can agree; and the same shall be binding, as well to

all other of the said Prisoner or Prisoners Creditors as aforesaid, who shall have charged him, her, or them, in Custody or Execution, as also to every such Prisoner and Prisoners; and every such Assignee and Assignees is and are indemnified for what he or they shall fairly, and without any fraudulent Design, do in the Premises, according to the Direction of this Act.

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the same to be binding to Creditors and Prisoners.
Assignees indemnified therein.

XXII. And, to the Intent the Estate and Effects of such Prisoner or Prisoners who shall be discharged by virtue of this Act may be truly and fairly applied, Be it further enacted by the Authority aforesaid, That it shall be lawful for the respective Courts at *Westminster*, from whence any Process issued upon which any such Prisoner or Prisoners was or were charged in Execution, and whose Estate and Effects in pursuance of this Act shall have been assigned as by this Act is directed, or where any such Prisoner shall have been charged in Execution by Process issued out of any other Court, it shall be lawful for the Judges of the Courts of *King's Bench*, *Common Pleas* and *Exchequer*, or any one of them, from Time to Time, on the Petition of any Creditor of such Prisoner or Prisoners who had charged any such Prisoner in Execution, or of such Prisoner or Prisoners, to any such Court or any Judge thereof, complaining of any Insufficiency, Fraud, Mismanagement, or other Misbehaviour of any such Assignee or Assignees, to order the respective Parties concerned to attend such Court or Judge on the Matter of every such Petition, at some certain Time in such Order to be mentioned; and every such Court at *Westminster*, and also every Judge thereof, on hearing the Parties concerned therein, is hereby authorized to make such Order, and give such Directions in the Premises, either for the Removal or displacing such Assignee or Assignees, and appointing any new or other Assignee or Assignees in the Place or Stead of such Assignee or Assignees so to be removed or displaced, or for the prudent, just or equitable Management or Distribution of the said Estate and Effects, for the Benefit of the respective Creditors as aforesaid of such Prisoner or Prisoners, as any of the said Courts at *Westminster*, or Judges there respectively shall think fit; and in case of the Removal or displacing of any Assignee or Assignees, and the appointing of any new Assignee or Assignees, the Estate or Effects of such Prisoner or Prisoners shall from thenceforth be divested out of the Assignee or Assignees so removed or displaced, and be vested in, and delivered over to, the new Assignee or Assignees, in the same Manner and for the like Intents and Purposes, as the same were before vested in the former Assignee or Assignees.

On Complaint to Court of any Insufficiency, Fraud, Mismanagement, or other Misbehaviour of the Assignees,

the Parties to be ordered to attend the Court thereon; and the Court to make such Order therein as they shall think just.

On Removal of any Assignee, the Prisoner's Estate and Effects to be vested in and delivered over to the new Assignees.

XXIII. And be it further enacted, That in all and every Case and Cases where mutual Credit shall have been given between any Prisoner or Prisoners who shall be discharged under this Act, and any other Person or Persons, Bodies Politic or Corporate, before the Delivery of any Schedule or Inventory of the Estate and Effects of any such Prisoner or Prisoners, upon

Where mutual Credit hath been given,

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the Assignees
may only state
the Account
and demand the
Balance.

Oath, as by this Act is herein before directed; then and in every such Case the respective Assignee or Assignees of such Prisoner or Prisoners shall have Power, and is and are hereby required, on his or their Part or Parts, to state and allow an Account between them; and nothing more shall be deemed to be vested by any Assignment which shall be made in pursuance of this Act, as the Estate or Effects of such Prisoner or Prisoners, than what shall appear to have been due to him, her, or them respectively, and to be justly coming to him, her, or them on or for the Balance of such Account when truly stated.

None intitled
to the Benefit of
this Act who
have taken or
shall take the
Benefit of any
Act of Insol-
vency, unless
compelled by a
Creditor to deli-
ver up his Estate
and Effects.

XXIV. Provided always, and be it further enacted by the Authority aforesaid, That no Person or Persons, who hath or have already taken or shall hereafter take the Benefit of any Act for the Relief of Insolvent Debtors, shall have or receive any Benefit or Advantage of or under this Act, or be deemed to be within the Meaning hereof, so as to gain any Discharge, unless compelled by any Creditor to discover and deliver up his or her Estate and Effects; any Thing herein contained to the contrary notwithstanding.

This Act not
to extend to
Scotland.

XXV. And be it also enacted by the Authority aforesaid, That this Act, or any Thing herein contained, shall not extend, or be construed to extend, to that Part of *Great Britain* called *Scotland*. (7.)

(7.) It was omitted to state, by way of Note to Section 1, that in an Action against a Sheriff's Officer for taking more than his legal Fee, the Plaintiff must prove the Sum allowed by Law; the Stat. 23 Hen. VI. not being the Rule; *Martin v. Slade*, 2 N. R. 59.

[In Note 5, the Word *Execution* is inserted by Mistake instead of *Vacation*.]

No. 30.

10 George III. c. 50. — An Act for the further preventing Delays of Justice by reason of Privilege of Parliament.

[Inserted post. Class V. — Some of the Provisions relate to Persons not having Privilege of Parliament.]

No. 31.

19 George III. c. 70. — An Act for extending the Provisions of an Act, made in the twelfth Year of the Reign of King George the First, intituled, "An Act to prevent frivolous and vexatious Arrests;" and for other Purposes.

[See post. Title *Inferior Courts*.]

No. 32.

33 George III. c. 5. — An Act for the further Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver, upon Oath, their Estates for their Creditors Benefit.

WHEREAS it may be reasonable to extend the Benefits of an Act, passed in the Thirty-second Year of the Reign of his late Majesty King George the Second, of glorious Memory, intituled, "An Act for Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver, upon Oath, their Estates for their Creditors Benefit," to several Persons who have neglected or shall neglect to take the Benefit of the same, within the Time limited in the said Act, and also to several Persons who were not entitled to any Benefit under the said Act: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, every Person now or hereafter in Execution for any Sum or Sums of Money not exceeding three hundred Pounds shall be entitled to such Relief as by an Act, passed in the thirty-second Year of his late Majesty King George the Second, intituled, "An Act for Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver, upon Oath, their Estates for their Creditors Benefit," is granted to Persons charged in Execution for any Sum or Sums of Money not exceeding one hundred Pounds.

II. And be it further enacted by the Authority aforesaid, That every Person now in Execution for any Sum or Sums of Money exceeding the Sum of one hundred Pounds, and not exceeding the Sum of three hundred Pounds, shall be entitled to such Relief, notwithstanding the Time limited by the said Act for such Person to apply is or may be expired, provided such Person shall make such Application at any Time before the End of *Easter Term* next.

III. And be it further enacted by the Authority aforesaid, That every Creditor or Creditors, his, her, or their Executors or Administrators, at whose Suit any Debtor shall be charged in Execution for any Sum or Sums not exceeding the Sum of three hundred Pounds, shall have such Remedy, by compell-

No. 32.
33 George III:
c. 5.
Preamble.

32 Geo. 2.
cap. 28. recited.

Persons charged
in Execution for
Sums not ex-
ceeding 300l. to
be entitled to the Relief of
recited Act.

Persons now in
Execution for
Sums exceeding
100l. and not
exceeding 300l.
making Applica-
tion before the
End of *Easter*
Term entitled
to like Re-
lief.

Debtors in Exe-
cution for Sums
not exceeding
300l. may be
compelled to
deliver up their
Effects.

No. 32. ling such Debtor to deliver up his or her Estate and Effects for
 33 George III. the Benefit of his or her Creditors, as is provided by the before
 c. 5. recited Act, in Cases where the Sum for which such Debtor
 shall be in Execution does not exceed the Sum of one hundred
 Pounds.

Persons com-
 mitted on At-
 tachments for

‘ IV. And whereas many Persons are often committed on
 ‘ Attachments, for not paying Money awarded to be paid under
 ‘ Submissions to Arbitration by Rules of Court, or under Sub-
 ‘ missions to Arbitration Bonds, and which Submissions have
 ‘ been made Rules of the Court, in pursuance of an Act, passed
 ‘ in the ninth and tenth Years of the Reign of *William* the
 ‘ Third, for determining Differences by Arbitration, and like-
 ‘ wise for not paying of Costs, duly and regularly taxed and
 ‘ allowed by the proper Officer, after proper Demands made
 ‘ for that Purpose, and also upon any Writ of *Excommunicato*
 ‘ *Capiendo*, or other Process for or grounded on the Nonpay-
 ‘ ment of Costs or Expences in any Cause or Proceeding in any
 ‘ Ecclesiastical Court;’ it is hereby declared and enacted,
 That all such Persons are and shall be entitled to the Benefit of
 this Act, and subject to the same Terms and Conditions as are
 herein expressed and declared with respect to Prisoners for
 Debt only.

Debtors who
 from Ignorance
 or Mistake,
 have not taken
 the Benefit of
 the recited or
 this Act in
 Time, entitled
 thereto.

V. And be it further enacted, That where any Debtor as
 aforesaid shall have neglected or shall neglect to take the Be-
 nefit of the said Act or of this Act, within the Time limited
 by the said Act or this Act, and shall make it appear to the
 Court out of which such Execution issued, that such Neglect
 arose from Ignorance or Mistake, such Debtor shall then be
 entitled to take the Benefit of the said Act or of this Act, as if
 he or she had taken the same within the Time by the said Act
 or this Act so limited as aforesaid: Provided always, That it
 shall be lawful for any Creditor or Creditors, at whose Suit
 any Debtor shall be so in Execution as aforesaid, to file Inter-
 rogatories for the Examination of such Prisoner, before his or
 her being admitted to take the Benefit of this or the before
 recited Act: Provided always, That this Act shall not extend
 to any Debt or Debts that may be owing to the Crown, nor
 shall it affect any Proceeding which at any Time may be law-
 fully had under or by virtue of any Commission of Bankrupt:
 Provided also, That this Act, or any Thing herein contained,
 shall not extend to that Part of *Great Britain* called *Scotland*:
 Provided also, That this Act shall continue and be in force for
 five Years, and from thence to the End of the then next Session
 of Parliament, and no longer.

Creditors may
 file Interroga-
 tories for Pri-
 soners to an-
 swer.

Act not to ex-
 tend to Debts
 due to the
 Crown, &c.

Continuance of
 Act.

[Made perpetual by 39 Geo. III. c. 50.]

No. 33.

37 George III. c. 85.—An Act to amend so much of an Act, made in the thirty-second Year of the Reign of King George the Second, intituled, “An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates, for their Creditors Benefit,” as relates to the weekly Sums thereby directed to be paid to Prisoners in Execution for Debt, in the Cases therein mentioned.—[19th. June 1797.]

WHEREAS by an Act, passed in the second Year of the Reign of his late Majesty King George the Second, intituled, “An Act for the Relief of Debtors with respect to the Imprisonment of their Persons,” it was, among other Things, enacted, That Prisoners charged in Execution for any Debt or Debts under the Sum therein mentioned, who should make an Assignment of their Estate and Effects for the Benefit of their Creditors, in the Manner therein specified, should be entitled to be discharged, or to have an Allowance, not exceeding the Sum of two Shillings and Four-pence *per Week*, to be made to them by such of their Creditors charging them in Execution, as should insist on their being detained in Prison; which Act was by several subsequent Acts amended and continued until the first Day of June one thousand seven hundred and fifty nine: And whereas, by an Act, passed in the thirty-second Year of the Reign of his late Majesty King George the Second, intituled, “An Act for the Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates, for their Creditors Benefit;” it is, amongst other Things, enacted, that, from and after the fifteenth Day of June one thousand seven hundred and fifty-nine, if any Person or Persons should be charged in Execution for any Sum or Sums of Money, not exceeding, in the Whole, the Sum of one hundred Pounds, or on which Execution or Executions there should remain due a Sum or Sums of Money not amounting to above the said Sum of one hundred Pounds, and should be minded to deliver up to his or their Creditor or Creditors, who should so charge him, her, or them in Execution, all his, her, or their Estate and Effects, for or towards the Satisfaction of the Debt or Debts wherewith he, she, or they should so stand charged, it should and might be lawful to and for any such Prisoner or Prisoners to exhibit such Petition to such Court of

No. 33.

37 George III
c. 85.

2 Geo. 2. c. 22.

32 Geo. 2. c. 28.
recited.

No. 33.
37 George III.
c. 85.

Law, and to carry on such Proceedings thereon as in the said last mentioned Act are particularly specified and set forth; and that the several Requisites contained in the said Act, having been complied with on the Part of such Prisoner or Prisoners as therein mentioned, it should and might be lawful for such Court, by Rule or Order thereof, immediately to cause such Prisoner or Prisoners to be discharged, upon his, her, or their executing such Assignment and Conveyance of his, her, or their Estate and Effects in the Manner therein mentioned, unless such Creditor or Creditors who should have charged any such Prisoner or Prisoners in Execution, his, her, or their Executors or Administrators, should agree, by Writing, in the Manner therein mentioned, to pay and allow weekly a Sum not exceeding two Shillings and Fourpence, as any such Court should think fit, unto such Prisoner, to be paid so long as any such Prisoner should continue in Prison, in Execution at the Suit of any such Creditor or Creditors, with such Remedy, in case of any Failure in the Payment of such weekly Sum, as in the said Act is particularly mentioned: And whereas it is also by the said Act further enacted, that where more Creditors than one should charge any Prisoner or Prisoners in Execution, and should desire to have such Prisoner or Prisoners detained in Prison, each and every such Creditor and Creditors should only respectively pay such weekly Sum of Money, not exceeding one Shilling and Sixpence a Week, as therein mentioned: And whereas such Allowance is now insufficient for the Purpose for which it was intended: Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the fifth Day of July one thousand seven hundred and ninety-seven, so much of the said last recited Act, as relates to the Amount of the several and respective Sums, not exceeding two Shillings and Fourpence, and one Shilling and Sixpence, to be paid and allowed as aforesaid, shall be and the same is hereby repealed.

From July 5, 1797, so much of last recited Act (§ 13 and 14) as relates to weekly Allowances, repealed.

Prisoners entitled to Allowance of 2s. 4d. may apply to the Court to have it increased to 3s. 6d. per Week.

II. And be it further enacted, That it shall and may be lawful for all and every such Prisoner and Prisoners in Execution for Debt, on the said fifth Day of July one thousand seven hundred and ninety-seven, who shall be by virtue of any Rule or Order of any Court enabled to receive from any Creditor or Creditors any Sum not exceeding the said Sum of two Shillings and Fourpence, to make an Application by Petition to the Court, in the Prison whereof such Prisoner or Prisoners shall remain and be charged in Custody, praying that such weekly Allowance be ordered to be increased by virtue of this Act; and that upon due Notice being given to such Creditor or Creditors of such Petition, it shall and may be lawful for such Court to hear the Matter thereof, and by Rule or Order of such Court immediately to cause such Prisoner or Prisoners to be discharged, unless such Creditor or Creditors, his, her, or their Executors,

Administrators, or Assigns, doth or do insist upon such Prisoner or Prisoners being detained in Prison, and shall agree in the Manner mentioned in the said last-mentioned Act, with respect to the Allowance not exceeding two Shillings and Four-pence *per Week*, to pay and allow weekly a Sum not exceeding three Shillings and Six-pence, as any such Court shall think fit, unto such Prisoner, to be paid at and for such Time or Times, and under and subject to the like Regulations as in the said Act are expressed with respect to the said Allowance not exceeding two Shillings and Four-pence *per Week*.

No. 33.
George III.
c. 85.

III. And be it further enacted, That in all Cases where any Person or Persons, charged in Execution for Debt at any Time or Times from and after the said fifth Day of *July* one thousand seven hundred and ninety-seven, would have been entitled to be discharged under the Provisions of the said Act last mentioned, unless their Creditor or Creditors would agree as therein mentioned to pay and allow a weekly Sum not exceeding two Shillings and Four-pence to such Prisoner, as any such Court as is therein mentioned should think fit, it shall and may be lawful for such Court, by Rule or Order thereof, immediately to cause the said Prisoner or Prisoners to be discharged, upon such Prisoner or Prisoners executing such Assignment and Conveyance of his or her Estate and Effects as is therein mentioned, unless the Creditor or Creditors doth or do insist upon such Prisoner or Prisoners being detained in Prison, and shall agree, by Writing signed in the Manner in the said last-mentioned Act, to pay and allow weekly a Sum not exceeding three Shillings and Sixpence, as any such Court shall think fit, unto the said Prisoner or Prisoners, to be paid at such Time and Times, and in such Manner, and upon the same Terms and Conditions, and under the same Rules and Regulations in every respect, as in and by the said Act is provided with respect to the Allowance thereby directed to be made.

Debtors entitled to their Discharge under last recited Act, if not paid weekly Allowance, may be discharged, unless Creditors agree to pay them not exceeding 3s. 6d. weekly.

IV. Provided always, and be it enacted, That where more Creditors than one shall have already charged, or shall at any Time or Times hereafter, from and after the said fifth Day of *July* one thousand seven hundred and ninety-seven, charge, under and by virtue of the said last recited Act, any Person or Persons in Execution, and shall desire to have such Prisoner or Prisoners detained in Prison, each and every such Creditor and Creditors shall respectively pay such weekly Sum of Money only, not exceeding two Shillings, on every *Monday* in every Week, to or for such Prisoner or Prisoners respectively, as the Court before whom any such Prisoner or Prisoners shall be brought up to be discharged, under the Powers, Authorities, and Directions, contained in the said last recited Act, shall, at the Time of his, her, or their being remanded, on such Note for the Payment of the weekly Sum ordered to be paid, as in the said last recited Act is required and provided being given, direct or appoint.

Where more Creditors than one insist on a Debtor's Detention, they are each to pay him not exceeding 2s. weekly.

No. 34.

39 George III. c. 50. — An Act for making perpetual an Act, made in the thirty-third Year of the Reign of his present Majesty, intituled, “An Act for the farther Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery, and deliver, upon Oath, their Estates for their Creditors Benefit.”—[13th. June 1799.]

No. 35.

EXP. 41 George III. c. 64. — An Act for the further Relief of Debtors, with respect to the Imprisonment of their Persons.—[23d. June 1801.]

No. 35.

41 George III.
c. 64.

Any Creditor at whose Suit a Debtor is charged in Execution, may consent to his Discharge, without losing the Benefit of the Judgment upon which the Execution issued; except that the Person of the Debtor shall not be again liable to Arrest for the same Debt, nor the Bill be proceeded against.

WHEREAS it might tend to the Discharge from Imprisonment of many Prisoners in Execution for Debt, if their Creditors were enabled to discharge such Debtors, without losing the whole Benefit of the Judgments obtained against such Debtors; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall be lawful for any Creditor or Creditors, at whose Suit any Debtor or Debtors is or are or shall be in Prison, and taken or charged in Execution for any Sum of Money, by Writing signed by such Creditor or Creditors, or by one of them, for and on the Behalf of himself or herself, and the others of them (being Complainants in the same Action), to signify or declare his, her, or their Consent to the Discharge of such Debtor or Debtors from the Gaol or Prison in which he, she, or they is or are or shall be confined in Execution at the Suit of such Creditor or Creditors, without losing the Benefit of the Judgment upon which the Execution against such Debtor or Debtors issued, except as herein after provided; and that for and notwithstanding the Discharge of any Debtor or Debtors in pursuance of such Consent as aforesaid, the Judgment upon which such Debtor or Debtors was or were taken or charged in Execution, shall continue and remain in full Force to all Intents and Purposes except as hereinafter provided; and it shall be lawful for such Creditor or Creditors at any Time to take out Execution on every such Judgment against the Lands, Tenements, Hereditaments, Goods, and Chattels of such Debtor or Debtors, or

any of them (other than and except the necessary Apparel and Bedding of him, her, or them, or his, her or their Family, and the necessary Tools for his, her, or their Trade or Occupation, not exceeding the Value of ten Pounds in the Whole), or to bring any Action or Actions on every such Judgment, or to bring any Action or use any Remedy for the Recovery of his or their Demand, against any other Person or Persons liable to satisfy the same, in such and the same Manner as such Creditor or Creditors could or might have had or done in case such Debtor or Debtors had never been taken or charged in Execution upon such Judgment: Provided always, That no Debtor or Debtors, who shall be discharged in pursuance of this Act, shall at any Time afterwards be taken or charged in Execution, or arrested upon any Judgment herein-before declared to continue and remain in full Force, or in any Action which may be brought in any such Judgment, and that no Proceeding by *Scire Facias*, Action, or otherwise, shall be had against any Bail in the Action in which such Judgment was obtained.

No. 35.
George III:
c. 64.

II. And be it further enacted by the Authority aforesaid, That the Executors and Administrators of any such Creditor as aforesaid shall and may consent to the Discharge of any Debtor or Debtors to their Testator or Intestate, in such and the same Manner, and with the same Advantages and Consequences, in all Respects, as such Creditor, if living, might or could have done in pursuance of this Act; and such Executors or Administrators respectively shall not, by reason of any such Discharge in pursuance of this Act, be deemed guilty of a *Devastavit*, or chargeable with the Debt due from the Person or Persons so discharged.

Executors may consent to the Discharge of Debtors, as the Creditors if living could do.

III. And be it further enacted by the Authority aforesaid, That every Sheriff, Gaoler, or Keeper, in whose Prison, Gaol, or Custody any Debtor or Debtors is or are or shall be confined or detained in Execution, shall, and every of them is hereby required, within twenty-four Hours next after such Consent in Writing of any Creditor or Creditors as herein before-mentioned shall have been produced to and left with such Sheriff, Gaoler, or Keeper, or his Deputy or Agent at such Prison or Gaol (the Hand Writing or Mark of such Creditor or Creditors to such Consent in Writing being duly proved by an Affidavit of some credible Person, to be thereto annexed, and to be sworn before one of the Judges of the Court out of which the Execution against such Debtor or Debtors issued, or a Commissioner duly authorized to take Affidavits in such Court), to discharge and set at Liberty the Debtor or Debtors to whose Discharge such Consent shall be signified or declared as aforesaid, if he, she, or they shall be kept or detained in Custody only upon the Execution issued at the Suit of the Creditor or Creditors signifying or declaring such Consent.

Sheriffs, &c. within 24 Hours after the Consent of a Creditor is produced, shall discharge the Debtor, if detained only at his Suit.

IV. And be it further enacted by the Authority aforesaid, That this Act shall not extend, or be construed to extend, to that Part of Great Britain called Scotland.

Act shall not extend to Scotland.

- No. 35. V. And be it further enacted, That this Act shall continue
 41 George III. and be in force for three Years, and from thence to the End of
 c. 64. the then next Session of Parliament, and no longer. (1.)
 Continuance of Act. (1.) This Act does not appear to have been continued, but is inserted
 for the Purpose of suggesting the Propriety of its Revival.

No. 36.

43 George III c. 46.—An Act for the more effectual Prevention of frivolous and vexatious Arrests and Suits ; and to authorize the levying of Poundage upon Executions in certain Cases.—[27th. May 1803.]

- No. 36. 'FOR the more effectual Prevention of frivolous and vex-
 43 George III. atious Arrests, and for the Relief of Persons imprisoned
 c. 46. 'on Mesne Process;' be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of June One thousand eight hundred and three, no Person shall be arrested or held to Special Bail upon any Process issuing out of any Court, within those Parts of the United Kingdom of Great Britain and Ireland called England and Ireland, for a Cause of Action not originally amounting to such Sum for which such Person is by the Laws now in being liable to be arrested and held to Bail, over and above and exclusive of any Costs, Charges, and Expences that may have been incurred, recovered, or become chargeable in or about the suing for or recovering the same, or any Part thereof.

Persons arrested on Mesne Process, instead of giving Bail, may deposit with the Sheriff, &c. the Sum indorsed on the Writ, with tol. to answer Costs, &c.

- II. 'And whereas it does and may happen that Persons arrested upon Mesne Process may not be able to find sufficient Sureties for their Appearance at the Return of the Writ, and yet may be able to make a Deposit of the Money for which they are so arrested, together with a competent Sum for Costs: And whereas it is expedient that Persons arrested should, upon making such Deposit, be permitted to go at Large until the Return of the Writ without finding Bail to the Sheriff for their Appearance at the Return thereof,' Be it therefore enacted by the Authority aforesaid, That all Persons who shall, from and after the first Day of June in the Year of our Lord one thousand eight hundred and three, be arrested upon Mesne Process, within those Parts of the United Kingdom of Great Britain and Ireland called England and Ireland, shall be allowed in lieu of giving Bail to the Sheriff, to deposit in the Hands of the Sheriff, by delivering to him, or to his Under-Sheriff, or other Officer to be by him appointed for that Purpose, the Sum indorsed upon the Writ by virtue of the Affidavit for holding to Bail in that Action, together with ten Pounds in Addition to such Sum to answer the Costs which may accrue

or be incurred in such Action up to and at the Time of the Return of the Writ; and also such further Sum of Money, if any as shall have been paid for the King's Fine upon any original Writ; and shall thereupon be discharged from such Arrest as to the Action in which he, she, or they shall so deposit the Sum indorsed on the Writ; and that the Sheriff shall in every such Case, at or before the Return of the said Writ, pay into the Court in which such Writ shall be returnable the Sum of Money so deposited with him as aforesaid; (1.) and thereupon in case the Defendant or Defendants shall afterwards duly put in and perfect Bail (2.) in such Action according to the Course and Practice of such Court, the Sum of Money so deposited and paid into Court as aforesaid shall, by Order of the Court, upon Motion to be made for that Purpose, be repaid to such Defendant or Defendants; but in case the Defendant or Defendants shall not duly put in and perfect Bail in such Action, then and in such Case, the said Sum of Money so deposited and paid into Court as aforesaid, shall, by Order of the Court, upon a like Motion to be made for that Purpose, be paid over to the Plaintiff or Plaintiffs in such Action, who shall be thereupon authorized to enter a Common Appearance, or file Common Bail for such Defendant or Defendants, if the said Plaintiff or Plaintiffs shall so think fit; such Payment to the Plaintiff or Plaintiffs to be made subject to such Deductions, if any, from the Sum of ten Pounds deposited and paid to answer the Costs as aforesaid, as upon the Taxation of the Plaintiff's Costs, as well of the Suit as of his Application to the Court in that Behalf, may be found reasonable.

III. And be it further enacted by the Authority aforesaid, That in all Actions to be brought in *England or Ireland*, from and after the said first Day of *June*, in the said Year of our Lord one thousand eight hundred and three, wherein the Defendant or Defendants shall be arrested and held to special Bail, and wherein the Plaintiff or Plaintiffs shall not recover (3.) the Amount of the Sum for which the Defendant or Defendants in such Action shall have been so arrested and held to Special Bail, such Defendant or Defendants shall be entitled to Costs of Suit, to be taxed according to the Custom of the Court in which such Action shall have been brought; provided that it shall be made appear to the Satisfaction of the Court in which such Action is brought, upon Motion to be made in Court for

No. 36.
43 George III.
c. 46.

Such Deposit shall be paid into Court, and on the Defendant's perfecting Bail be repaid him; or on Bail not being put in, be paid over to the Plaintiff, &c. by Order of Court.

Wherever Plaintiff shall not recover the Amount of the Sum for which Defendant was held to Bail (without probable Cause,) Defendant shall be entitled to Costs under a Rule of Court.

(1.) The Sheriff liberating the Defendant without receiving the Money, is not entitled to be relieved from an Attachment upon paying the Debt sworn to and Costs, but is answerable for the whole Debt; *R. v. Sheriff of London*, 9 E. 316.

(2.) If the Bail are put in, who are excepted to, and instead of justifying render the Defendant, the Plaintiff is not entitled to the Deposit, but the Defendant may receive it back; *Henford v. Harris*, 4 Taint. 669. So when the Defendant after putting in Bail had rendered himself, (although, come semble, without Exception); *Chadwick v. Bulbye*; 3 M. and S. 283.

(3.) The Act does not extend to the Case of a Plaintiff in Debt on Bond recovering a Verdict for nominal Damages, and taking Judgment for the Penalty; *Cummack v. Gregory*, 10 E. 525.

No. 36. that Purpose, and upon hearing the Parties by Affidavit, that
 43 George III. the Plaintiff or Plaintiffs in such Action had not any rea-
 c. 46. sonable or probable Cause for causing the Defendant or De-
 fendants to be arrested and held to Special Bail in such Amount
 as aforesaid, and provided such Court shall thereupon by a Rule
 or Order of the same Court, direct that such Costs shall be
 allowed to the Defendant or Defendants (4.); and the Plaintiff
 or Plaintiffs shall upon such Rule or Order being made as afore-
 said, be disabled from taking out any Execution for the Sum
 recovered in any such Action, unless the same shall exceed, and
 then in such Sum only as the same shall exceed the Amount of
 the taxed Costs of the Defendant or Defendants in such Action;
 and in case the Sum recovered in any such Action shall be less
 than the Amount of the Costs of the Defendant or Defendants
 to be taxed as aforesaid, that then the Defendant or Defendants
 shall be entitled, after deducting the Sum of Money recovered
 by the Plaintiff or Plaintiffs in such Action from the Amount of
 his or their Costs so to be taxed as aforesaid, to take out Exe-
 cution for such Costs in like Manner as a Defendant or
 Defendants may now by Law have Execution for Costs in other
 Cases.

In Actions on
 Judgments,
 Plaintiffs not
 entitled to Costs,
 unless by Rule
 of Court.

IV. And be it further enacted by the Authority aforesaid,
 That in all Actions which shall be brought in *England* or *Ire-*
land, from and after the said first Day of *June* in the said Year
 of our Lord one thousand eight hundred and three, upon any
 Judgment recovered, or which shall be recovered, in any
 Court in *England* or *Ireland*, the Plaintiff or Plaintiffs in such
 Action on the Judgment, shall not recover or be entitled to
 any Costs of Suit, unless the Court in which such Action on
 the Judgment shall be brought, or some Judge of the same
 Court shall otherwise order. (5).

Plaintiffs may
 levy Poundage,
 and Expence of
 Execution, be-
 yond the judg-
 ment.

V. And be it further enacted by the Authority aforesaid,
 That from and after the said first Day of *June* in the said Year
 of our Lord one thousand eight hundred and three, in every
 Action in which the Plaintiff or Plaintiffs shall be entitled to
 levy under an Execution against the Goods of any Defendant,
 such Plaintiff or Plaintiffs may also levy the Poundage Fees and
 Expences of the Execution over and above the Sum recovered
 by the Judgment.

On Mesne Pro-
 cess, after Re-
 turn thereof,
 Defendants in

VI. And be it further enacted, That from and after the
 said first Day of *June* one thousand eight hundred and three,
 if any Defendant shall be taken, detained, or charged in Cus-

(4.) Costs allowed under this Power when the Defendant paid a less
 Sum into Court, which was taken out by the Plaintiff; *Laidlow v. Cockburn*,
 2 N. R. 76: not where the Arrest was by an Executor swearing to Belief
 (the Action being on a Bill for £50, on which the Testator had indorsed
 and afterwards obliterated—*Aug. 25, Forty Pounds*; the Sum of £40 having
 been in fact paid)—*Heath J.* said, there must be a strong Case against an Exe-
 cutor to bring him within the Act; *Foulkes v. Neighbour*, 1 Marshall, 21.

(5.) The Defendant, instead of applying to stay Proceedings, pleaded
nil tibi Record, (which was evidently for Delay); the Court of C. B. were of
 Opinion that the Plaintiff ought to have his Costs; *Garnwell v. Barker*,
 5 Taunt. 264. The Section does not extend to Actions or Judgments of Non-
 suit; *Bennett v. Neale*, 14 E. 343.

today at the Suit of any Person or Persons upon Mesne Process issuing out of any of his Majesty's Courts of Record at *Westminster* or *Dublin*, and shall be imprisoned or detained thereon, after the Return of such Process, it shall and may be lawful for such Defendant in Vacation Time only, and upon due Notice thereof given to the Attorney for the Plaintiff or Plaintiffs in such Process, to put in and justify Bail before any one of the Justices or Barons of the Court out of which such Process shall have issued, who may, if he shall think fit, thereupon order a Rule to issue for the Allowance of such Bail, and may further order such Defendant to be discharged out of Custody by Writ of *Supersedeas*, or otherwise, according to the Practice of such Court, in like Manner as the same is and may be done by an Order of Court in Term Time.

No. 36.

43 George III. c. 46.

Custody may, in Vacation, justify Bail before one Justice.

No. 37.

44 George III. c. 13.—An Act to prevent the Desertion and Escape of Petty Officers, Seamen, and others, from his Majesty's Service, by Means or under Colour of any Civil or Criminal Process. — [15th. December 1803.]

WHEREAS many Petty Officers and Seamen belonging to his Majesty's Navy: and divers Persons who have either voluntarily entered into, or been duly impressed to serve in his Majesty's Navy, have of late Years been taken out of his Majesty's Service by Means of Arrests and Detainers, as well both for real and pretended Debts or Causes of Action, as also upon Charges or Accusations for alleged criminal Offences; and such Petty Officers, Seamen, and other Persons as aforesaid, have been thereupon discharged out of Custody, either by due Course of Law, or by the Consent of the Persons at whose Suit or on whose Complaint they had been so arrested, apprehended, or detained, with Intent to enable them, and they have been thereby oftentimes enabled to desert and escape from his Majesty's said Service, to the great Prejudice and Detriment of the said Service; for Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, whenever any Petty Officer or Seaman belonging to his Majesty's Navy, or any Person who shall have voluntarily entered into or been impressed to serve in his Majesty's Navy, shall be arrested, apprehended, or taken in Execution by any Sheriff or Sheriffs, or other Officer or Officers, either upon or by virtue of any Mesne or other Writ or Process whatsoever, or upon or by virtue of any Warrant for any alleged criminal Offence, and shall

No. 37.

44 George III. c. 13.

Petty Officers or Seamen taken out of his Majesty's Naval Service for any Civil or Criminal Matter shall be kept in Custody after they are entitled to

No. 37.
 44 George III.
 c. 13.
 be discharged
 from the Writ
 Judgement,
 shall be
 veyed and
 vered to
 Com-
 mander or
 C mmissioned
 Officer of the
 Navy, to serve
 on board the
 Fleet.

be thereby taken from or out of his Majesty's Sea Service, or from or out of any Ship or Vessel appointed for receiving Volunteers and impressed Men to serve in his Majesty's Navy, or from or out of the Custody of any Officer of the Impress or other Officer in his Majesty's Sea Service, with whom any such Person as aforesaid shall have voluntarily agreed to enter into, or by whom any such Person as aforesaid shall have been impressed to serve in, his Majesty's Navy, or who shall have the Custody or Charge of any such Person as aforesaid, the Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, who shall have arrested or apprehended any such Petty Officer, Seaman, or other Person as aforesaid, or in whose Custody any such Petty Officer, Seaman, or other Person as aforesaid, shall happen to be, by way of Detainer upon or by virtue of any such Writ, Process, Warrant, Charge or Accusation, or upon or by virtue of the Judgement or Sentence of any Court, shall not discharge any such Petty Officer, Seaman, or other Person as aforesaid, out of his or their Custody, either upon Payment or Satisfaction of the Debt or Debts, Cause or Causes of Action, or for Want of Prosecution for, or upon Acquittal of, the Charge or Accusation, Charges or Accusations, upon which any such Petty Officer, Seaman, or other Person as aforesaid, shall be in Custody as aforesaid, or by Consent of the Person or Persons at whose Suit, or on whose Behalf, any such Petty Officer, Seaman, or other Person as aforesaid, shall have been arrested, apprehended, taken or detained, or upon giving Bail or any other Security, or upon any Undertaking either to appear to, or to answer or satisfy, any such Debt or Debts, Cause or Causes of Action, Charge or Accusation, Charges or Accusations; or in case of Conviction for any criminal Offence or Offences after the Expiration of any Period or Term for which any such Petty Officer, Seaman, or other Person as aforesaid may have been sentenced to be imprisoned, but shall detain and keep every such Petty Officer, Seaman, and other Person as aforesaid, in his or their Custody, and shall thereupon forthwith, and as soon as every such Petty Officer, Seaman, or other Person as aforesaid, would be entitled to be discharged out of Custody, with respect to any such Writ, Process, or Warrant, or with respect to any such Debt or Debts, Cause or Causes of Action, Charge or Charges, Accusation or Accusations, Judgement or Sentence, with all convenient Speed, safely and securely conduct and convey, and safely and securely deliver every such Petty Officer, Seaman and other Person as aforesaid, either unto the Commander in Chief of some of his Majesty's Ships, or unto some Commissioned Officer of the Navy being authorized and empowered to raise Seamen for his Majesty's Service, or unto some principal Officer employed in regulating the Service of raising Men for his Majesty's Fleet, whichever shall be at or nearest to the Place where any such Petty Officer, Seaman, or other Person as aforesaid shall then happen to be; in order

that every such Petty Officer, Seaman, or other Person as aforesaid may be detained and kept to serve on board his Majesty's Fleet, as before they were liable to do; and such Commander in Chief, Officer of the Impress, or principal Regulating Officer as aforesaid, shall thereupon give and deliver to such Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers as aforesaid, a Certificate, directed to the Treasurer of his Majesty's Navy, specifying the Receipt of every such Petty Officer, Seaman, or other Person as aforesaid as shall be so delivered to him respectively as aforesaid, and the Places from and to which any such Petty Officer, Seaman, or other Person as aforesaid shall have been conducted and conveyed as aforesaid; and the Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers who shall have so conducted, conveyed, and delivered as aforesaid any such Petty Officer, Seaman, or other Person as aforesaid, shall thereupon be entitled to receive of and from the said Treasurer of his Majesty's Navy the Sum of two Shillings *per Mile*, and no more, for conducting, conveying, and delivering as aforesaid, every such Petty Officer, Seaman, or other Person as aforesaid, upon Production to the said Treasurer of the Navy of such Certificate.

No. 37.
George III.
c. 13.

How Sheriff, &c. shall be paid for conducting them *2s. per Mile*.

II. And be it further enacted, That in case any such Petty Officer, Seaman, or other Person as aforesaid, shall be removed from or out of the Custody of any Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers by whom any such Petty Officer, Seaman, or other Person as aforesaid shall have been arrested or apprehended as aforesaid, or in whose Custody any such Petty Officer, Seaman, or other Person as aforesaid, shall happen to be, into the Custody of any other Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, by virtue of any Writ of *Habeas Corpus*, or otherwise, the Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers so having arrested or apprehended such Petty Officer, Seaman, or other Person as aforesaid, or in whose Custody any such Petty Officer, Seaman, or other Person as aforesaid shall happen to be, shall certify in Writing to the Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, into whose Custody such Petty Officer, Seaman, or other Person as aforesaid shall be so removed, upon the Back of the Writ or other Proceeding by which such Petty Officer, Seaman, or other Person as aforesaid shall be removed out of the Custody of such Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers as aforesaid, that such Person so removed as aforesaid is a Petty Officer, Seaman, or other Person as aforesaid, as the Case may be, and liable to be kept and detained for his Majesty's Service; and so *toties quoties* as often as any such Petty Officer, Seaman, or other Person as aforesaid shall be removed from the Custody of one such Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, to the Custody of any other Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers.

How Transfer of such Petty Officers or Seamen from one Sheriff to another shall be certified.

No. 37.
43 George III.
c. 13.

Sheriff, &c.
neglecting to
convey such
petty Officer or
Seaman as here-
in directed, and
detaining them
in Custody, lia-
ble to Action of
Trespass, at
their Suit.
Suit.

III. Provided always, and be it further enacted, That in case any Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, shall neglect or refuse to conduct and convey, for the Purpose aforesaid, any such Petty Officer, Seaman, or other Person as aforesaid to any Distance not exceeding eighty Miles for the Space of two Days, or to any Distance not exceeding one hundred and twenty Miles for the Space of three Days, and so to any other greater Distance at the Rate of forty Miles *per* Day, after the Time that any such Petty Officer, Seaman, or other Person as aforesaid, ought to be conducted and conveyed as aforesaid, for the Purpose aforesaid, according to the Directions of this Act, but shall wilfully or negligently detain and keep any such Petty Officer, Seaman, or other Person as aforesaid in his or their Custody for any Space of Time over and above the several Spaces of Time herein-before in that Behalf specified, without conducting and conveying him as aforesaid, for the Purpose aforesaid, then all and every such Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, shall be subject and liable to be impeaded in an Action of Trespass upon the Case, at the Suit of every such Petty Officer, Seaman, or other Person as aforesaid, who shall be so detained as aforesaid; any Thing herein contained to the contrary notwithstanding.

Penalty on
Sheriff, &c. for
suffering such
Petty Officer or
Seaman to
escape

IV. And be it further enacted, That in case any Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, shall not safely and securely conduct and convey, and safely and securely deliver, any such Petty Officer, Seaman, or other Person as aforesaid, either unto such Commander in Chief, Officer of the Impress, or principal Regulating Officer as aforesaid, whichever shall be at or nearest to the Place where such Petty Officer, Seaman, or other Person as aforesaid, shall then happen to be, but shall either wilfully or negligently permit or suffer any such Petty Officer, Seaman, or other Person as aforesaid, to escape and go at large, all and every such Sheriff or Sheriffs, Gaoler or Gaolers, or other Officer or Officers, shall for every such Offence forfeit and pay the Sum of one hundred Pounds, to be sued for and recovered in any of his Majesty's Courts of Record at *Westminster* for Offences committed in *England*, in his Majesty's Court of Exchequer at *Edinburgh* for Offences committed in *Scotland*, and in any of his Majesty's Courts of Record in *Dublin* for Offences committed in *Ireland*, by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, Protection, or Wager of Law, nor more than one Imparance, shall be allowed; one Moiety of which Penalty shall be paid to his Majesty, his Heirs and Successors, and the other Moiety thereof to him or them who shall sue for the same, together with full Costs of Suit.

" Limitation of Actions, three Calendar Months. — Venue in
" the County.—General Issue; Treble Costs, § 5.—Act may
" be altered or repealed this Session, § 6."

No. 38.

48 George III. c. 123.—An Act for the Discharge of Debtors in Execution for small Debts, from Imprisonment in certain Cases.—[30th. June, 1808.]

WHEREAS it might tend greatly to the Relief of certain Debtors in Execution for small Debts, and at the same Time occasion no material Prejudice to Trade and public Credit, if such Debtors should, after a limited Period of Imprisonment, be allowed the Benefit of a Discharge therefrom, the Creditors at whose Suit they were so in Execution being at the same Time authorized to take out other Writs of Execution against the Land and Goods of such Debtors, or to use other Remedy for the Satisfaction of their Debts, as if the Persons of such Debtors had never been taken in Execution; be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, all Persons in Execution upon any Judgment in whatsoever Court the same may have been obtained, and whether such Court be or be not a Court of Record, for any Debt or Damages not exceeding the Sum of twenty Pounds, (1.) exclusive of the Costs recovered by such Judgment, and who shall have lain in Prison thereupon for the Space of twelve successive calendar Months next before the Time of their Application to be discharged as hereinafter mentioned, shall and may, upon his, her, or their Application for that Purpose in Term-time made to some one of his Majesty's superior Courts of Record at *Westminster*, to the Satisfaction of such Court, be forthwith discharged out of Custody, as to such Execution, by the Rule or Order of such Court: Provided always, that in the Case of any such Application being made to be discharged out of Execution upon a Judgment obtained in any of his Majesty's superior Courts of Record at *Westminster*, such Application shall be made to such one of those Courts only, wherein such Judgment shall have been obtained, and that whether the Person so in Execution shall then be actually detained in the Gaol or Prison of the same Court, or shall then stand committed on Habeas Corpus to the Gaol or Prison of another Court: Provided always, that if it shall happen that any such Discharge shall have been unduly or fraudulently obtained upon any false Allegation of Circumstances, which if true might have entitled the Prisoner to be discharged by virtue of this Act, such Prisoner shall, upon the same being made appear to the Satisfaction of the Court by whose Rule or Order the said Prisoner had been so discharged, be liable to be again taken in Execution and remanded to his former Custody by the Rule or Order of the same Court: Provided also, that no Sheriff, No. 38.
48 George III.
c. 123. Persons having lain in Prison for a Year in Execution on Judgment of any Court, whether of Record or not, for any Debt or Damages not exceeding 20l. (exclusive of Costs,) shall be discharged, on Application to the Courts at Westminster in Term Time. Persons fraudulently obtaining Discharge, may be retaken in Execution, &c. Such Discharge, no Escape.

(1.) The Act extends to Costs under £ 20. recovered upon Judgment of Nonsuit; *Roylance v. Hewling*, 3 M. and S. 282.

No. 38.
48 George III.
c. 123.

Estate of the
Debtors so dis-
charged shall
remain liable.

Except Neces-
saries.

But such
Debtors shall
not be arrested
in any Action
on such Judg-
ment, &c.

Act not ex-
tended to Ire-
land or Scot-
land.

Gaoler, or other Person whatsoever, shall be liable as for the Escape of any such Prisoner in respect of his Enlargement during such Time as he shall have been at large, by means of such his undue Discharge as aforesaid: Provided always, That for and notwithstanding the Discharge of any Debtor or Debtors by virtue of this Act, the Judgment whereupon any such Debtor or Debtors was or were taken or charged in Execution, shall nevertheless continue and remain in full Force to all Intents and Purposes, except as to the taking in Execution the Person or Persons of such Debtor or Debtors thereupon, as is hereinafter provided: And that it shall and may be lawful for the Creditor or Creditors, at whose Suit such Debtor or Debtors had been, was, or were so taken or charged in Execution, to take out all such Execution or Executions on every such Judgment against the Lands, Tenements, Hereditaments, Goods, and Chattels of any such Debtor or Debtors (other than and, except the necessary Wearing Apparel and Bedding of and for him, her, or them, and for his, her, or their Family, and the necessary Tools for his, her, or their Trade or Occupation, not exceeding the Value of ten Pounds in the whole;) or to bring any such Action or Actions on any such Judgment against such Debtor or Debtors respectively, or to bring any such Action or use any such Remedy for the Recovery and Satisfaction of his, her, or their Demand, against any other Person or Persons liable to satisfy the same, in such and the same Manner, but in such and the same Manner only as such Creditor or Creditors otherwise could or might have done in case such Debtor or Debtors had never been taken or charged in Execution upon such Judgment; Provided always, That no Debtor or Debtors who shall be duly discharged in pursuance of this Act, shall at any Time afterwards be taken or charged in Execution upon any Judgment herein so as before declared to continue and remain in full Force, nor be arrested in any Action to be brought on any such Judgment, and that no Proceeding whatsoever by *Scire Facias*, Action, or otherwise, shall be maintained or had against the Bail in any Action upon the Judgment, wherein the Defendant or Defendants shall have been charged in Execution, and afterwards discharged by virtue of the Provisions of this Act.

II. And be it further enacted by the Authority aforesaid, That this Act shall not extend or be construed to extend to those Parts of the United Kingdom of Great Britain and Ireland, which are commonly called *Ireland* and *Scotland*.

No. 39.

- 49 George III. c. 6. — An Act for the Relief of Prisoners in Custody for Nonpayment of Money pursuant to Orders of Courts of Equity. — [19th. March 1809.]

[See post. Title Cox v. Lewis.]

No. 40.

- 51 George III. c. 124. — An Act further to extend and render more effectual certain Provisions of an Act passed in the twelfth Year of the Reign of his late Majesty King George the First, intituled, "An Act to prevent frivolous and vexatious Arrests;" and of an Act passed in the fifth Year of the Reign of his Majesty King George the Second, to explain, amend and render more effectual the said former Act; and of two Acts passed in the nineteenth and forty-third Years of the Reign of his present Majesty, extending the Provisions of the said former Acts. — [2d. July 1811.]

WHEREAS by an Act made in the twelfth Year of the
Reign of his late Majesty King George the First, 1713, George III.
intituled, "An Act to prevent frivolous and vexatious Ac-
cuses," it was amongst other Things enacted, That, from
and after the twenty-fourth Day of July One thousand seven
hundred and twenty-six, no Person should be held to special
Bail upon any Process issuing out of any Superior Court, where
the Cause of Action should not amount to the Sum of ten
Pounds or upwards, nor out of any inferior Court, where the
Cause of Action should not amount to the Sum of five Shillings
or upwards, and that in all Cases, where the Cause of Action
should not amount to the Sum of ten Pounds or upwards in the
Superior Court, or to five Shillings or upwards in any inferior
Court, the Plaintiff or Plaintiffs should proceed by Way
of Process against the Person or Persons so bound to answer
or cause to be arrested the Debt of the Defendant or Defendants,
but should receive the Sum of three Pence only, upon the
Jurisdiction of the Court, which said Sum of three Pence, and if
such Defendant or Defendants should ever appear at the Return
of the Process, or within five Days after such Return, in such
Case it should be lawful for the Plaintiff or Plaintiffs, upon five
Days being made and filed in the proper Court, to employ a
Sheriff's or other Process, or to employ a Constable, or other
Service, and to employ a Constable, or other Service, to take
Bail for the Defendant or Defendants, and to proceed against
as if such Defendant or Defendants had entered his Plea to
their Appearance or filed Bail, which Act was

- No. 40. explained and amended by an Act passed in the fifth Year of the Reign of his Majesty King George the Second, intituled, "An Act to explain, amend, and render more effectual an Act made in the twelfth Year of the Reign of his late Majesty King George the First, intituled, 'An Act to prevent frivolous and vexatious Arrests,'" : And whereas by the said Act made in the fifth Year of the Reign of his said late Majesty King George the Second, it was enacted, that where the Cause of Action should not amount to ten Pounds or upwards in any superior Court, or to forty Shillings or upwards in any inferior Court, no special Writ or Writs, nor any Process specially therein expressing the Cause or Causes of Action, should be sued forth or issued from any such superior or inferior Court, to compel any Person or Persons to appear thereon in such Court or Courts; and all Proceedings and Judgments on any such Writ are thereby declared to be void and of none Effect: And whereas the said several Acts being temporary, the same were afterwards made perpetual by an Act passed in the twentieth (a) Year of the Reign of his said late Majesty King George the Second: And whereas by an Act passed in the nineteenth Year of the Reign of his present Majesty, intituled, 'An Act for extending the Provisions of an Act made in the twelfth Year of the Reign of King George the First, intituled, "An Act to prevent frivolous and vexatious Arrests, and for other Purposes;"' it was enacted, That from and after the first Day of July One thousand seven hundred and seventy-nine, no Person should be arrested or held to special Bail upon any Process issuing out of any inferior Court, where the Cause of Action should not amount to the Sum of ten Pounds or upwards; but that the like Copies of Process should be served, and the like Proceedings had thereupon in such inferior Court, in all cases where the Cause of Action should not amount to ten Pounds or upwards, as are directed to be had by the said Act of the twelfth Year of the Reign of King George the First, in such inferior Court, where the Cause of Action should not amount to the Sum of forty Shillings; any Law or Usage to the contrary notwithstanding; and further Provisions were made touching Proceedings in such inferior Courts, in conformity to the Provisions in the said former Act: and so much of any Act or Acts of Parliament passed for the Recovery of Debts within any Districts and Jurisdictions, as authorized Arrest and Imprisonment of Defendants where the Cause of Action should amount to less than ten Pounds, was thereby repealed; and further Provisions were made touching Actions in inferior Courts, where the Cause of Action should not amount to ten Pounds: And whereas by an Act passed in the forty-third Year of his Majesty's Reign, intituled, "An Act for the more effectual Prevention of frivolous and vexatious Arrests and Suits; and to authorize the levying of Poundage upon Executions in certain Cases," it was enacted, that, from and after the first Day of June one thousand eight hundred and three, no Person

(a) The twenty-first. But the original Act is so.

should be arrested or held to special Bail upon any Process issuing out of any Court within those Parts of the United Kingdom of Great Britain and Ireland called England and Ireland, for a Cause of Action not originally amounting to such Sum for which such Person was by the Laws then in being liable to be arrested and held to Bail, over and above and exclusive of any Costs, Charges and Expences that may have been incurred, recovered or become chargeable in or about the suing for or recovering the same, or any Part thereof. And whereas it is expedient to extend and render more effectual the Provisions of the said recited Acts; Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of November one thousand eight hundred and eleven, no Person shall be held to Special Bail upon any Process issuing out of any Court where the Cause of Action shall not have originally amounted to the Sum of fifteen Pounds or upwards, over and above and exclusive of any Costs, Charges and Expences that may have been incurred, recovered or become chargeable, in or about the suing for or recovering the same, or any Part thereof, (except where the Cause of such Action shall arise or be maintainable upon or by virtue of any Bill or Bills of Exchange, Promissory Note or Promissory Notes, in which cases the Parties liable thereupon may be held to Special Bail in such manner as if this Act had not been made); and that in all cases where the Cause of Action shall not amount to fifteen Pounds or upwards, exclusive of such Costs, Charges and Expences as aforesaid, (except as hereinbefore is excepted) and the Plaintiff or Plaintiffs shall proceed by the Way of Process against the Person, he, she or they shall not arrest or cause to be arrested, the Body of the Defendant or Defendants, but shall serve him, her or them personally within the Jurisdiction of the Court, with a Copy of the Process and Proceedings thereupon, in such manner as by the said Act of the twelfth Year of the Reign of his late Majesty King George the First, is provided in cases where the Cause of Action shall amount to ten Pounds or upwards in any superior Court, or to forty Shillings or upwards in any inferior Court; and that where the Cause of Action in any Court shall not amount to the Sum of fifteen Pounds, exclusive of such Costs, Charges and Expences as aforesaid, (except as hereinbefore is excepted) no Special Writ or Writs, nor any Process specially therein expressing the Cause or Causes of Action, shall, from and after the said first Day of November, be sued forth or issued from any Court, in order to compel any Person or Persons to appear thereon in such Court; and all Proceedings and Judgments that shall, from and after the said first Day of November, be had on any such Writ or Process, shall be, and are hereby declared to be void and of no Effect.

No. 40.

George III.
c. 124No Person
held to special
Bail where
Cause of Action
under 15l. (Ex-
ception) Defen-
dant not to be
arrested.No special
Writ sued forth
to compel Ap-
pearance.Proceedings
on such Writ or
Process void.

No. 40.
51 George III.
c. 124.

No Distringas
to issue for de-
fault of Appear-
ance: Defend-
ant served per-
sonally.

II. And whereas the Provisions in the said Acts, authorizing Plaintiffs in Default of Appearance of Defendants to enter a Common Appearance or file Common Bail as therein directed, are not deemed to extend to Proceedings by Original and other Writs, whereupon no *Capias* is issued, and it is expedient to extend the Provisions of the said former Acts to such Proceedings; Be it further enacted by the Authority aforesaid, That in all Cases where the Plaintiff or Plaintiffs shall proceed by Original or other Writ and Summons, or Attachment thereupon, (1.) in any Action against any Person or Persons not having Privilege of Parliament, no Writ of *Distringas* shall issue for Default of Appearance, (2.) but the Defendant or Defendants shall be served personally with the Summons or Attachment, at the Foot of which shall be written a Notice informing the Defendant or Defendants of the Intent and Meaning of such Service, to the Effect following :

Form of No-
tice where De-
fendant cannot
be personally
served.

C. D. [naming the Defendant] You are served with this Process at the Suit of A. B. [naming the Plaintiff or Plaintiff] to the Intent that you may appear by your Attorney in his Majesty's Court of _____ at Westminster, at the Return hereof, being the _____ Day of _____ in order to your Defence in this Action; And take Notice, that in Default of your Appearance, the said A. B. will cause an Appearance to be entered for you, and proceed thereon as if you had yourself appeared by your Attorney.

In what Case
Distringas issued.

But in case it shall be made appear to the Satisfaction of the Court, or, in the Vacation, of any Judge of the Court, from which such Process shall issue, or into which the same shall be returnable, that the Defendant or Defendants could not be personally served with such Summons or Attachment, and that such Process had been duly executed at the Dwelling-house or Place of Abode of such Defendant or Defendants, that then it shall and may be lawful for the Plaintiff or Plaintiffs by Leave of the Court (3.) or Order of such Judge as aforesaid, to sue out a

(1.) *O. Nisi* in the Action of *Replevin* *T. H. Topping v. Fuge*, 5 Term 491.

(2.) In *Moss v. Taylor*, 5 Term 41, the Court of Common Pleas were divided whether or not it extended to Common Pleas, and threw out Doubt, this it did not even extend to the Court of Exchequer; but by a Note of the Reporter it appears, that that Court has adopted the opposite Construction; and I cannot answer on what Ground the Construction of the Act, having a limited Operation, is founded; the Words being perfectly clear. From my own Observation and Experience, I am satisfied that such is the true Intention of the Act could be applied with more beneficial Effect, than the Extension of Process upon Writs of Justice in Common Pleas.

(3.) The Process does not apply to a Case where the Defendant has been actually arrested, as in that Case the Plaintiff may proceed and enter an Appearance. *See* 1 Marshall, 206 (n). The Affidavit for obtaining a *Distringas* must state a Summons, but the Defendant has absconded, with the Consent of such Judge, *Term v. Fuge*, 5 Marshall, 491, and leave to issue

Writ of *Distringas* to compel the Appearance of such Defendant or Defendants; and that at the Time of the Execution of such Writ of *Distringas* there shall be served on the Defendant or Defendants by the Officer executing such Writ, if he, she, or they can then be met with; and if he, she, or they cannot then be met with, there shall be left at his, her, or their Dwelling-house or other Place where such *Distringas* shall be executed, a written Notice in the following Form:

No. 40.

George III.
c. 124.

IN the Court of [specifying the Court in which the Suit shall be depending] between A. B. Plaintiff, and C. D. Defendant, [naming the Parties.] Take Notice, that I have this Day distrained upon your Goods and Chattels for the Sum of forty Shillings, in consequence of your not having appeared by your Attorney in the said Court, at the Return of a Writ of [specifying the Writ] returnable there on the [specifying the Day] of [specifying the Month] and that in Default of your appearing to the present Writ of *Distringas* at the Return thereof, being the [specifying the Day] of [specifying the Month] the said A. B. will cause an Appearance, to be entered for you, and proceed thereon, as if you had yourself appeared by your Attorney.

Notice.

E. F.

[The Name of the Sheriff's Officer.]

To C. D. the above named Defendant.

And if such Defendant or Defendants shall not appear at the Return of such original or other Writ, or of such *Distringas*, as the Case may be, or within eight Days after the Return thereof, in such Case it shall and may be lawful to and for the Plaintiff or Plaintiffs, upon Affidavit being made and filed in the proper Court of the personal Service of such Summons or Attachment, and Notice written on the Foot thereof as aforesaid, or of the due Execution of such *Distringas*, and of the Service of such Notice as is hereby directed on the Execution of such *Distringas*, as the Case may be, to enter a common Appearance.

When the Defendant does not appear, Plaintiff may proceed.

^a *Distringas* will not be granted upon Affidavit that the Defendant was out of the Kingdom, and therefore could not be served with Process, *Jordan v. Bell*, 1 Marshall, 292.

The Statute 40 George III. c. 53, which applies to Ireland, the general Provisions of Stat. 42 Geo. III. c. 29, supra, provides, that whenever it appears to the Court out of which Process issued that all due Diligence has been used to have the Process of the Court personally served, yet, that under the special Circumstances of the Case appearing to the Court by Affidavit that it was impossible to procure personal Service, it should be lawful for the Court to substitute such other Kind of Service as the Court should deem fit. 4 G. III. c. 200.

As the Period of the Continuance of the present Act is very short, the Subject of it must of course be brought under the Consideration of the Legislature, and, I apprehend, that such a general Provision as has been last noticed would be very desirable; that it should be extended to all superior Courts, and the Case where Process could not be served on account of the Defendant being abroad, should be expressly included. It might be fairly contended to the Justice of the Courts to adopt such Regulations as would prevent Defendants from being injured by a Proceeding, of which they had not a sufficient Opportunity of being apprized.

No. 40.
51 George III.
c. 124.

ance for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her, or their Appearance; any Law or Usage to the contrary notwithstanding; and that such Affidavit or Affidavits may be made before any Judge or Commissioner of the Court out of or into which such Writ shall issue or be returnable, authorized to take Affidavits in such Court, or else before the proper Officer for entering common Appearances in such Court, or his lawful Deputy, and which Affidavit is hereby directed to be filed *gratis*.

19 Geo. 3. c.
70. respecting
Actions for
Sums less than
10l. extended to
Sums under 15l.

III. And be it further enacted. That all and every the Provisions contained in the said Act of the nineteenth Year of the Reign of his present Majesty, respecting Actions in inferior Courts, where the Cause of Action should amount to less than ten Pounds, shall be and the same are hereby, from and after the said First Day of November, extended to all Actions in such Courts where the Cause of Action shall not amount to fifteen Pounds, exclusive of such Costs, Charges and Expences as aforesaid (except where the Cause of such Action shall arise or be maintainable upon or by virtue of any Bill or Bills of Exchange, Promissory Note or Promissory Notes, in which Case the Parties liable thereupon may be held to Special Bail, in such manner as if this Act had not been made); and that so much of any Act or Acts of Parliament, heretofore passed for the Recovery of Debts within certain Districts and Jurisdictions, which may have authorized the Arrest and Imprisonment of Defendants, where the Cause of Action amounts to less than fifteen Pounds, exclusive of such Costs, Charges and Expences as aforesaid, shall be and the same is hereby, from and after the First Day of November, repealed.

So much of
Acts authorising
Arrests contra-
ry, repealed.

Proviso for
Scotland and
Ireland.

Continuance

IV. Provided always, That nothing in this Act contained shall extend or be construed to extend to those Parts of the United Kingdom called *Scotland* and *Ireland*.

V. Provided always, and be it enacted, That this Act shall continue and be in force until the first Day of November, in the Year One thousand eight hundred and sixteen, and thenceforth until the End of the then next Session of Parliament, and no longer.

No. 41.

52 George III. c. 34.—An Act for altering and amending an Act made in the thirty-second Year of the Reign of his late Majesty King George the Second, for the Relief of Debtors, with respect to the Imprisonment of their Persons, and of an Act made in the thirty-ninth Year of his present Majesty, for making perpetual an Act made in the thirty-third Year of his present Majesty, for the further Relief of Debtors; and for other Purposes in the said Act expressed.—[20th. April 1812.]

WHEREAS an Act was passed in the thirty-ninth Year of the Reign of his present Majesty, intituled, “An Act for making perpetual an Act made in the thirty-third Year of the Reign of his present Majesty, intituled, ‘An Act for the further Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of and deliver upon Oath their Estates, for their Creditors Benefit.’” And whereas in the said Act made in the thirty-third Year of the Reign of his present Majesty, the Benefits of an Act passed in the thirty-second Year of the Reign of his late Majesty King George the Second, intituled “An Act for the Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of and deliver upon Oath their Estates for their Creditors Benefit,” were extended to divers Persons not mentioned in the said Act made in the thirty-second Year of his late Majesty King George the Second: And whereas the Provisions of the said Acts made in the thirty-second Year of his late Majesty and in the thirty-third Year of the Reign of his present Majesty respectively require, that Debtors and others confined in any County or other Gaol above the Space of twenty Miles from Westminster-Hall, or the Court or Courts under the Process whereof any such Debtors or others are confined, desirous to avail themselves of the Benefits of the Provisions of the said Act, should apply by Petition to such Court or Courts, and authorize such Court or Courts, on being satisfied as therein mentioned, to order or cause such Debtors or others so petitioning to be brought to the Assizes which shall be holden for the County or Place where he, she or they shall be imprisoned, and further require that the Matter of the said Petition should at the Time of the Assizes held for the County or Place where he, she or they shall be imprisoned, be heard by the Judge of Assize on the Crown Side: And whereas there are many Gaols

No. 41.
George III.
c. 34.

39 G. 3. c. 50.

33 G. 3. c. 5.
32 G. 2. c. 28.

No. 41.
52 George III.
c. 34.

Debtors may
be brought be-
fore Justices at
General Ses-
sions, instead of
a Judge of As-
sise, &c.

'situate within local or particular Jurisdictions, for which no Assizes are ever or seldom if ever held, or at which Assizes there may be no Judge of Assise on the Crown Side, and other Gaols at considerable Distances from any Place where Assizes are usually held, by reason whereof such Debtors and others as are confined therein and would be entitled to the Benefits of the said Acts cannot avail themselves thereof in the Manner intended by the said Acts: And whereas great Hardship arises to such Persons therefrom, and it is desirable to give them Relief in the Premises; and that such Court or Courts, on being satisfied as aforesaid, should be further authorized to order or cause all Debtors and others entitled to the Benefit of the said Acts, or any of them, petitioning as aforesaid, to be brought up, and the Matter of their Petitions heard before the Justices assembled at any General or Quarter Sessions of the Peace to be holden within the Distance of twenty Miles of any Gaol in which any such Debtors or others may be confined; Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same That, from and after the passing of this Act, it shall and may be lawful for such Court or Courts to order such Debtors and others to be brought up before any Justices of the Peace assembled at any General or Quarter Sessions of the Peace which shall be mentioned in any Petition of any such Debtors or others to be holden for any County, City, Liberty, Franchise or Jurisdiction within the Distance of twenty Miles of the Gaol wherein such Debtors or others so petitioning shall be confined, instead of ordering such Debtors or others to be brought up before a Judge of Assizes in all Cases where such Court or Courts shall think proper so to do, and such General or Quarter Sessions of the Peace shall be holden either nearer to point of Distance from such Gaol or of Time than the Assizes at which such Judge of Assize would be present would be holden; and the Justices so assembled in General or Quarter Sessions before whom any such Debtors or others shall be brought in pursuance of any such Order, are required to hear and determine the Matter of such Petition, and do and perform all other such Matters and Things to the same Effect and in the same Manner, as near as may be, as by the said recited Act of the thirty-second Year of his late Majesty King George the Second, the Judge of Assize on the Crown Side is required to do and perform; and all Orders made by such Justices shall be as valid and effectual as if the same had been made by the Court or Courts out of which Process against such Debtors or others had issued, and the same shall be made Record of such General or Quarter Sessions, and Copies thereof shall from thence be transmitted signed by the Person presiding at such General or Quarter Sessions to the Court or Courts out of which Process had issued against such Debtors or others, to be a Record of such Court or Courts, and kept among the Records thereof; and all Enactments, Provisions,

Directions, Powers, Authorities, Pains, Penalties, Liabilities, Benefits, Advantages and Protections or Indemnities in the said Acts or either of them contained, applicable to any Matter or Thing to be done before any Judge of Assize or by any Person in obedience to any Order made, the Authority of the said Acts or either of them, or otherwise under or in pursuance of any Provisions in the said Acts or either of them contained, shall be and the same are hereby declared respectively to extend to and comprehend and be applicable to all like Matters and Things by this Act authorized to be done before any such Justices so assembled in such General or Quarter Sessions, or by any Person in obedience to any Order or Orders made under the Authority of this Act or otherwise, under or in pursuance of any Provision thereof, or authorized to be done by virtue thereof, in as full and ample a manner as if all and every the Clauses and Provisions in the said recited Acts or either of them contained, touching every Matter and Thing which might be done under the said recited Acts or either of them, had been fully and distinctly re-enacted and set forth in this Act, with apt Words to make them Part of and applicable to this Act.

No. 41.

52 George III.
c. 34.Provisions of
recited Acts ex-
tended to this
Act.

‘II. And whereas by an Act passed in the thirty-second year of the Reign of King George the Second, intituled, ‘An Act for the Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of and deliver upon Oath their Estates for the Creditors’ Benefit;’ it is, amongst other Things, provided, that no Person or Persons who had then taken or should thereafter take the Benefit of any Act for the Relief of insolvent Debtors, should have or receive any Benefit or Advantage thereon, under this Act, or be deemed to be within the Meaning thereof, so as to gain any Discharge, unless compelled by any creditor to discover and deliver up his or her Estate and Effects: And whereas it is expedient that the said recited Provisions in the said Act should be repealed;’ Be it enacted by the Authority aforesaid, That the same shall be and is hereby repealed.

32 G. 2. c. 28.
§ 24.

repealed.

No. 42.

53 George III. c. 102.—An Act for the Relief of Insolvent Debtors in *England*.—[10th. July 1813.*]

‘WHEREAS, notwithstanding the occasional Acts which have from time to time passed for the Relief of insolvent Debtors, and the Discharge of many Prisoners for small

No. 42.

53 George III.
c. 102.

* Few Statutes which have passed in modern Times have produced so general and extensive a Change in the System of the Law as the present. The Effect of it has been much complained of by the mercantile Classes of Society; and although the Duration of the Measure is but temporary, and without an

- No. 42. 'Debts by charitable Donations, great Numbers of Persons
 53 George III. 'generally remain confined for Debt in different Prisons in
 c. 102. 'England; and it is therefore expedient to make a permanent
 Provision for the Relief of insolvent Debtors in England,

express Renewal it will expire in three Years, it is probable that it may not be allowed even that limited Duration, and that before this Collection is offered to the Public, the Law may have been restored to its ancient Course.

It is, however, observable, that many of those whose Opinions are most directly opposite upon other Matters of Legislation, and who mutually impute to each other a Spirit of wanton Innovation, or of unreasonable Inconstancy of ancient Usages, have concurred in supporting this Measure, as being essentially conducive to the Interests of Humanity.

That true Policy and true Humanity must necessarily coincide in every judicial Establishment, is an Opinion admitted by all who have directed their Attention to general Enquiries respecting legal Policy; and it is evident that they must be united in that System which, in the full Measure of its Results, is attended with the greatest Portion of practical Utility: but it is in many Cases impossible to adopt a System which is beneficial with relation to the whole Sphere of its Operation, but free from great and serious Objections in many Instances of its immediate Application: and such must evidently be the Case, with respect to the Adoption or Rejection of the Law of Imprisonment for Debt, or to any Modification or Extension of that System which may render it nugatory by Excess of Lenity, or oppressive by Excess of Rigour.

To confide to a disappointed Creditor the Right of increasing for a considerable Length of Time an unfortunate Debtor, who has entered into his Engagements with a full Prospect and Intention of performing them, and having every Exertion in his Power to do so, must, when considered alone, excite a Sentiment of Reproach towards the Law which is open to such an Imputation: but to establish a System which will prevent the contracting Engagements, the Performance whereof depends upon the Hazards of Speculation, and excite a due Exertion for the Discharge of Obligations, as they would otherwise be disregarded, is essential to the Maintenance of a virtuous Society; and it probably will be found, upon Examination, that the Advantage can only be effectually obtained at the Price of the Inconvenience; and that a minute and accurate Distinction between the respective Cases, founded upon just and equitable Principles, is beyond the Reach of judicial Enquiry. The true Object of Legislation on the Subject is, therefore, to adopt that System which will be attended with the smallest Degree of Detriment and Inconvenience upon the whole; and it must never be overlooked, that the Misery occasioned by the Non-performance of Engagements may be in its Nature equally great and severe with that of the Coercion which is permitted as the Alternative. Supposing the Disadvantages on the one Side and the other to be nearly balanced, I am ready to admit, that the Choice should be against the Adoption of a System which would subject to a Length of Imprisonment a Party willing to apply all his apparent Resources in Satisfaction of his Engagements: but I conceive the real Balance of general Advantage to be considerably on the opposite Side. In this Instance, as in the general Operation of penal Law, the Evil which arises is direct and obvious: the great and essential Benefit arises from the silent and unperceived Operation of the Law, in inducing a Compliance with its Precepts, from an Apprehension of the Consequences resulting from their Infraction: and without calling in aid of the Argument the Sentiment of Humanity, the Inducements to form rash and fraudulent Engagements, or to recede from the Performance of Engagements, attended with Detriment and Inconvenience, are much stranger, and operate to an infinitely greater Extent, than those which, in the mere Indulgence of a Feeling of Disappointment and Revenge, would lead to the incurring a considerable Expence for the Purpose of inflicting unmerited Misery upon real Misfortune. The Testimony which has been repeatedly given by those holding the highest Stations in the Law, that upon the Agitation of Bills of Insolvency, they have received innumerable Applications from fraudulent Debtors, compared with the Number of those from harsh and rigorous Creditors, affords a strong Confirmation of the Reasoning, that the Coercion

under certain Restrictions:’ Be it enacted by the King’s most excellent Majesty, by and with the Advice and Consent of the 53
Lords Spiritual and Temporal, and Commons, in this present
No. 42.
George III.
c. 102.

from an Appi Imprisonment is much mor
by an Instrument of Justice than an Ei Oppre sion
The Delay Expence, and the Uncertainty of ultimate Satisfaction
ing Cons ultations with a prudent Creditor, to accept from his D
h Satisfac as is within the Reach of his Ability; while the Tem
at Delay and Expence, the Threats of exhausting the Means of pu
fection, and of rendering any adverse Proceedings nugatory and unan
ing to the Purposes of Satisfaction—afford to the fraudulent Debtor the
y Means of Delance and Offence; and with reference to the Act at
not under Consideration, it is said to be a common Fault from a Debtor
Creditor, to offer him a Bill at three Months upon the Noble Lord with
in it originated.

the great Increase of Imprisonment which usually takes place upon the
of sional Acts of Bankruptcy, and which has existed during
of the present Act, must manifestly arise from the Contrivance
De s themselves; as the Expectation of Relief by the Creditors
eter such Circumstances will of course be weaker than under the common
Operation of the pre-existing Law; and with respect therefore to all the
ditional Numbers, the Law becomes—not, as it should be, a Shield from
Oppression, but a Weapon of Offence.

Without alluding to the Impression of the general Body of commercial
ness, as to the Impolicy of the subsisting Law, I believe it may be stated
as unquestionable Fact, that, although the Number of Imprisonments has
not increased, the Number of Suits for the Recovery of Debts has
diminished in an almost incredible Degree. The Diminution of legal Proceed-
ings may be considered as no unfavourable Symptom of the Advantage
of a Law by which it is occasioned; but there is still the Difference of Excel-
lence and Defect between a Law which has the Effect of diminishing Litigation
and making it unnecessary, and producing without Effort those Advantages
which are the Object of Litigation to obtain, and a Law which occasions the
multiplication of Proceedings before resorted to in the Expectation of Jus-
tice and Redress, from a Conviction, not merely of their Inutility and
of their producing an Augmentation of the Loss which they
are intended to avert.

It is not difficult upon the Regulations contained in this and other Acts of
relief, for the Benefit of the Creditor, with respect to either present or
future Property. It is perfectly notorious that the practical Benefit arising
from these Regulations is very limited indeed. At the Time of my writing,
an Enquiry is directed in Parliament to bring the Question to a Test; but I
have a strong Impression that the Satisfaction which is so obtained will
amount to less than a Farthing in the Pound upon the Aggregate of the Debts
from which, by the Operation of the Acts, there is a personal Discharge. [The
Result of the Enquiry has not appeared at the Time of committing this Sheet
to the Press; but according to Statements which have been made in Parliam-
ent, my Computation is above fourfold more favourable than the Truth.]

Unfavourable, however, as my Impressions are of the Consequences result-
ing from the System which has been established, I am not an Advocate for its
 sudden Relinquishment. I am inclined to think that the permitting its Exist-
ence until the Period already fixed for its Expiration, will have the Effect of
affording a fair and reasonable Trial of its real Character; and perhaps
the Objections which have been referred to may be then obviated by an Exten-
sion of the Term of Imprisonment; and a System which is injurious by re-
taining the Imprisonment to three Months, may probably be rendered bene-
ficial by extending that Period to a Year; a Measure, the Adoption of which
for such a Length of Time as would afford an adequate Opportunity to judge
of its Effects, would, I conceive, be preferable to an immediate and total
Relinquishment of the System in the first Instance.

Before concluding this Note I will add, that, although unfriendly to the
Treasure which has occasioned it, I should feel much Pleasure from a Regulation
which would enable a Debtor, by the Assent of a considerable Portion of his

No. 42.
§3 George III.
c. 102.

Commissioner
appointed by his
Majesty to pre-
side in a Court,
to be called
“The Court
for Relief of
Insolvent Debt-
ors.”

Prisoners in
Custody for
three Months to
apply to such
Court by Peti-
tion.

Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall be lawful for his Majesty to appoint a fit Person, being a Barrister at Law, of six Years Standing at the least, to be his Majesty's Commissioner for the Relief of insolvent Debtors, and to preside in a Court to be called “The Court for Relief of insolvent Debtors,” which shall be a Court of Record for the Purposes of this Act; and that when and as soon as the Appointment shall have been notified in the *London Gazette*, such Court shall be deemed to be fully constituted and established; and thereupon it shall be lawful for every Person who shall be a Prisoner in any Prison in that Part of the United Kingdom called *England*, upon any Process whatsoever issuing from any Court whatsoever, for or by reason of any Debt, Damage, Costs, Sum or Sums of Money, or Contempt for Non-payment of Money, and who shall have been in actual Custody upon some Process for some or one of the said Debts or Demands during the Space of three Calendar Months or more, to apply by Petition in a summary Way to the Court to be established by virtue of this Act, for his or her Discharge from such Confinement, according to the Provisions of this Act; and in such Petition such Prisoner shall state the Prison wherein such Prisoner shall be then confined, the Time when such Prisoner was first charged in Custody, or received in Prison upon some Process on which he or she shall then be detained in Prison, together with the Name or Names of the Person or Persons at whose Suit or Prosecution such Prisoner shall, at the Time of presenting such Petition, be detained in Prison, and the Amount of the Debts or Sums of Money for which such Prisoner shall be so detained, and shall pray to be discharged from Custody upon all such Process, and to have future Liberty of his or her Person against the Demands for which such Prisoner shall be then in Custody, and against the Demands of all other Per-

Creditors, to place his Effects under proper Management for their Benefit, without the Necessity of a previous Imprisonment, or the Difficulties and Embarrassments which attend the present System of the Bankrupt Law; a Subject on which I have already stated my Sentiments to the Public; and which I shall probably have again occasion to advert to in the course of the present Volume.

I also think it not wholly unimportant to express a Doubt of the Propriety of introducing Exceptions in Acts of Insolvency, with regard to Damages recovered in particular Kinds of Actions; as such an Exception rather tends to confound the proper Limits between criminal and civil Proceedings, and imposes, in an indirect Course of Punishment, an Imprisonment of much greater Duration than is usual in Cases of the direct and immediate Application of the Criminal Law.

I conceive that a Provision against any Defendant being liberated in respect of the Costs of a Cause which has been brought to Trial, unless the Judge before whom the Cause was tried should certify that there was a reasonable Ground of Defence, would be a very material Relief to Creditors; and that it would be eligible to give the Court to which the Application was made, a Discretion to withhold the Discharge in respect of Costs upon Cases not brought to Trial, when there appeared to have been any sham Pleading or Writ of Error for Delay, or any other Proceeding whereby the Expence of the Plaintiff had been unnecessarily increased.

sons who shall be named or specified as Creditors, or as claiming to be Creditors of such Prisoner in the Schedule annexed to such Petition, and such Prisoner shall by such Petition offer to convey, assign and deliver to such Person or Persons as the Court shall direct, for the Payment of such Debts and Sums of Money respectively, from which such Prisoner shall seek to be discharged, all such Property as such Prisoner shall possess or have in his or her Power as hereinafter expressed; the Wearing Apparel and Bedding of such Prisoner, and his or her Family, and Working Tools and necessary Implements for his or her Occupation or Calling, and other small Necessaries, not exceeding in the Whole the Value of Twenty Pounds, only excepted; and shall also offer to engage to pay so much of all such Debts and Demands respectively as shall be justly due from such Prisoner to such Creditors, and as shall not be discharged by means of the Property so to be conveyed, assigned and delivered in case such Prisoner shall, at any time thereafter, become possessed of sufficient Means for such Purpose; to which Petition shall be annexed a Schedule, containing a full and true Description of all and every the Person and Persons to whom such Prisoner shall then be indebted, or who to his or her Knowledge or Belief shall claim to be a Creditor or Creditors of such Prisoner, with the Nature and Amount of such Debts and Claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such Prisoner; and also a full, just, true and perfect Account and Discovery of all the Estates and Effects, Real and Personal, in Possession, Reversion, Remainder or Expectancy, of every Nature and Kind whatsoever, which such Prisoner, or any other Person or Persons in Trust for such Prisoner, or for his or her Use, Benefit or Advantage, in any manner whatsoever, shall have been or shall be seized or possessed of, or interested in, or entitled unto, or which such Prisoner, or any Person or Persons in Trust for him or her, or for his or her Benefit, shall have had or shall have any Power to dispose of or charge for the Benefit or Advantage of such Prisoner at the Time when such Prisoner was first committed to Prison, or charged in Custody for any of the Debts or Sums of Money for which such Prisoner shall then be detained in Custody, or at any time subsequent to that time, before and on the Day on which the Truth of such Schedule shall be sworn to by such Prisoner as herein directed; together with a full, just, true and perfect Account of all Debts at such time owing to such Prisoner, or to any Person or Persons in Trust for him or her, or for his or her Benefit or Advantage, either solely or jointly with any other Person or Persons, and the Names and Places of Abode of the several Persons from whom such Debt shall be or shall have been due or owing, and of the Witnesses who can prove such Debts as shall remain due (if any such there shall be), so far as such Prisoner can set forth the same, and in what manner any such Estates or Effects,

No. 42.
George III:
c. 102.

Schedule of
Debts and Effects,
&c. annexed to Petition.

No. 42.
53 George III.
c. 102.

real or personal, of such Prisoner shall have been applied or disposed of since the Time when such Prisoner shall have been so first committed to Prison or charged in Custody as aforesaid; and which of such Estate or Effects, or any of them, shall have been in any manner conveyed, assigned, disposed of, charged or incumbered in any manner whatsoever, and when and in what manner, and for what Consideration, and to whom, and for whose Benefit, and which of such Estates and Effects, shall at the Time of swearing to such Schedule, be applicable to the Discharge of the Demands of his or her Creditors; and such Schedule shall also fully and truly describe the wearing Apparel and Bedding of such Prisoner, and his or her Family, and the working Tools and Implements, and other small Necessaries intended to be excepted by such Prisoner from the Assignment proposed by the said Petition to be made by such Prisoner as aforesaid, together with the Value of such excepted Articles respectively; and such Prisoner shall make Oath of the Truth of such Petition and Schedule to the following Effect, or with such Variations, according to special Circumstances, as shall be consistent with the Provisions of this Act:

Form of Oath
of Truth of Pe-
tition and Sched-
ule. "

I A. B. upon my corporal Oath, in the Presence of Almighty God, do solemnly swear and declare, That on the Day of I was really and truly a Prisoner in the actual Custody of in the Prison or Gaol of at the Suit of for the Sum of *las the case may be*], without any Fraud or Collusion whatever; and that I have ever since been and now am a Prisoner in in the actual Custody of the Keeper or Gaoler of *[as the case may be]*, or within the Liberties thereof, at the Suit of and of *[as the case may be]*, without any Fraud or Collusion whatever; and that I have not taken the Benefit of any Act of Parliament made for the Relief of Insolvent Debtors within the Space of five Years now last past, and that I have not had at any time since I was committed to Prison, or charged in Custody by the said as aforesaid, any means whatsoever of discharging the Demands of the said and of the other Persons named or described as my Creditors, or as claiming to be my Creditors, in the Schedule hereunto annexed, and subscribed by me, except the Estates and Effects mentioned in the Schedule; and that I have not now any means of discharging such Demands, except so much of the said Estates and Effects as still remain applicable for that Purpose, as expressed in the said Schedule; and that all the Estates and Effects which I have disposed of since I was so first committed to Prison, or charged in Custody, have been necessarily expended by me for the Maintenance of myself and Family, and for Law Charges and other unavoidable Expences during my Confinement, and in Payment of just Debts due and owing by me before or since the said Day of when I was first committed to Prison or detained in Custody, at the

' Suit of the said as aforesaid; and that the said Schedule
 ' doth contain, to the best of my Knowledge and Belief, 53
 ' a full, just, true and perfect Account and Discovery of all the
 ' Estates and Effects, Real and Personal, in Possession, Rever-
 ' sion, Remainder or Expectancy, and of every Nature and
 ' Kind soever, which I now am, or which any Person or Per-
 ' sons in Trust for me, or for my Use, Benefit or Advantage,
 ' now is or are seized, possessed of, interested in, or entitled
 ' unto, or which was or were in my Possession, Custody or
 ' Power, or in the Possession, Custody or Power of any such
 ' Person as aforesaid, or which I or any Person or Persons had
 ' any Power of disposing of or charging for my Benefit or
 ' Advantage at the Time I was so first committed to Prison, or
 ' charged in Custody by the said as aforesaid, or at any
 ' Time since that Time, and of all Debts owing to me or to any
 ' Person or Persons in Trust for me or for my Benefit, either
 ' solely or jointly with any other Person or Persons, and of
 ' all Securities and Contracts whereby any Money now is or
 ' will or may hereafter become payable, or any Benefit or
 ' Advantage may accrue or might have accrued to me or my
 ' Use, or to any Person or Persons in Trust for me or for my
 ' Benefit, at the Time I was so first committed to Prison, or
 ' charged in Custody as aforesaid, and the Names and Places
 ' of Abode of the several Persons from whom such Debts are
 ' or were due and owing, and of the Witnesses who can prove
 ' such Debts or Contracts as remain due or unperformed, so
 ' far as I am able to set forth the same, and that neither I nor
 ' any Person or Persons in Trust for me, or for my Use and
 ' Benefit, to my Knowledge or Belief, have or has any Land,
 ' Money, Stock or other Estate or Effects whatsoever, Real or
 ' Personal, in Possession, Reversion, Remainder or Expectancy,
 ' or of any Nature or Kind whatsoever, or any Power of dis-
 ' posing of or of charging for my Benefit or Advantage any
 ' Property whatsoever, other than such as are in the said
 ' Schedule contained or expressed, except the wearing Appa-
 ' rel and Bedding for myself and Family, working Tools, and
 ' the necessary Implements for my Occupation and Calling,
 ' and other small Necessaries, not exceeding in the Whole
 ' the Value of twenty Pounds, mentioned and described in the
 ' said Schedule, and intended to be excepted from the Assign-
 ' ment intended to be made by me; and that I have not, nor
 ' hath or have any Person or Persons for me, directly or indi-
 ' rectly, sold, lessened or otherwise conveyed or disposed of in
 ' Trust or otherwise, except as hereinbefore expressed, or in
 ' any manner concealed any Part of my Lands, Money, Goods,
 ' Chattels, Stocks, Debts, Securities, Contracts, Estates or Ef-
 ' fects, real or personal, whereby to secure the same for my own
 ' Benefit, or whereby I may receive or expect to receive any
 ' Profit or Advantage therefrom, or with any Intent to defraud or
 ' deceive any Creditor or Creditors to whom I am or was indebt-
 ' ed in any wise howsoever. So help me GOD.'

No. 42.
 George III.
 c. 102.

No. 42.
53 George III.
c. 104
Court, or a
Justice to admi-
nister Oath.

Copy of Peti-
tion, Schedule
and Oath, deli-
vered to every
Creditor.

And the said Oath shall and may be administered to such Prisoner by such Court, or by any Officer of such Court appointed by such Court for that Purpose, or by a Justice of the Peace for the County, Riding, Division or Place in which such Prisoner shall be detained in Custody, and the said Petition, and Schedule and Oath, shall be respectively subscribed by such Prisoner, in the Presence of the Person by whom such Oath shall be administered, who shall certify the Subscription thereof respectively by such Prisoner; and such Petition, Schedule and Oath shall be filed in the said Court, which Court shall thereupon name a Day for hearing the Matter of such Petition; and a Copy of such Petition, Schedule and Oath shall be served on the several Person or Persons who shall be specified in such Petition as the Person or Persons at whose Suit such Prisoner shall be then detained in Custody, or on his, her or their Attorney or Solicitor, in the Action or Actions, Suit or Suits, in respect of which such Prisoner shall be so detained, together with a Copy of the Order of the Court upon such Petition, twenty Days at the least before the Day appointed for hearing the Matter of such Petition, by delivering such Copies respectively to such Person or Persons respectively, or leaving the same with the Wife, Clerk or Servant of such Person or Persons respectively, at his, her or their usual Place of Abode; and Notices in Writing that such Petition had been presented, and such Schedule and Oath filed in the said Court, together with a Copy of the Order on such Petition, shall be served in like manner on all and every the Person or Persons named or described in the said Schedule as Creditors, or as claiming to be Creditors of the said Prisoner, and against whose Demands such Prisoner shall seek to be discharged, or on the Attorney or Solicitor of any Creditor, in any Action or Suit brought against such Prisoner for the Demand of such Creditor; and such Service shall, on the hearing of the Matter of the said Petition, be proved on Oath to the Satisfaction of the Court.

If Creditors
numerous, No-
tice inserted in
London Ga-
zette, and in
two or more
Newspapers, as
Court shall di-
rect.

II. Provided always, and be it further enacted, That in case it shall be made appear to the Satisfaction of the said Court, that the Creditors of such Prisoners, exclusive of those at whose Suit such Prisoner shall be then detained in Custody, are so numerous, or their Residence so remote, that the Expence of serving such Creditors with Notice of the Application of such Prisoner for his or her Discharge, would be so considerable that such Prisoner might be unable to procure such Service, to be duly made in manner hereinbefore directed, or that for any other reason it will be fit, in the Judgment of the said Court, to dispense with such Service, with respect to all or any of such Creditors, it shall be lawful for the said Court to order that Notice of the Petition of such Prisoner for his or her Discharge may, instead of being served on such Creditors respectively, be inserted in the *London Gazette*, and in such Two or more Newspapers as the said Court shall direct, and in such Form of Words as the said

Court shall approve, Twenty Days at the least before the Day appointed for hearing the Matter of the said Petition, and that such Notice shall be deemed sufficient Notice to the Creditors named or described therein; or to substitute some other Mode of Notice, which in the Judgment of the said Court may appear reasonable; and upon such Notice so given to the Satisfaction of the said Court, it shall be lawful for the said Court to proceed on such Petition with respect to all such Creditors as shall be named or described in such Notice, in the same manner as the said Court might have done if such Creditors had been respectively served with Notice as hereinbefore directed.

No. 42.
George III.
c. 102.

III. Provided always, and be it hereby enacted, That the Sum of three Shillings and no more shall be paid to any Printer or Proprietor of any Newspaper for the Insertion of any such Advertisement aforesaid; and all Printers and Proprietors of Newspapers are hereby required to insert the same on the Payment of the said Sum of three Shillings for the Insertion thereof; and that no such Advertisement shall be liable to the Payment of, or be chargeable or charged with the Payment of any Stamp or Stamp Duty whatsoever.

Insertion of
Advertisement
33.

Stamp Duty.

IV. Provided always, and be it enacted, That in case it shall be made appear to the Satisfaction of the said Court, that any of the Persons required to be served with such Petition, Schedule, Oath, Order or Notice, is or are beyond the Seas, or cannot be found, so as to be served with such Petition, Schedule, Oath and Order, as required by this Act, and the said Court shall not think fit to order Notice to such Persons to be inserted in the *London Gazette* and such Newspapers as aforesaid, or to substitute any other Mode of Notice, it shall be lawful for the said Court to proceed upon the said Petition notwithstanding such Defect in the Service thereof; but in such case such Prisoner shall not be in any manner discharged from the Demands of the Person or Persons who shall not be so served, or with respect to whom such Notice shall not be given in the *London Gazette* and such Newspapers as aforesaid, or in such other substituted Mode of Notice as shall be approved of by the said Court, unless such Person or Persons shall appear before the said Court and oppose the Discharge of such Prisoner, or consent to the Proceeding of the Court, notwithstanding any such Defect of Service.

Court may proceed where Notice not given in *London Gazette*, &c. if Creditors cannot be found.

V. Provided always, and be it further enacted, That if any Prisoner seeking the Benefit of this Act shall within two Years before he or she shall seek the Benefit of this Act, have resided in any Place or Places out of the United Kingdom, and shall during such Residence have contracted in such Place or Places any Debt from which he or she shall seek to be discharged by virtue of this Act, such Prisoner shall not be discharged under the Authority of this Act from any such Debt, without the Consent of the Person or Persons to whom such Debt shall be due, unless such Prisoner shall at the time of such Application be in actual Custody for such Debt, or shall be actually

Previous Residence out of the Kingdom.

No. 42.
53 George III.
c. 102.

Hearing of
Petitions may
be deferred in
case of Defect
of Service.

On hearing
Petition Credi-
tors may oppose.

Court, if not
satisfied, may
remand Prison-
er.

sued, or shall have been sued in some Court of Law or Equity in *England* for the same; in any of which cases Notice of the Application for the Discharge of such Prisoner shall be given to the Creditor or Creditors so detaining in Custody or suing or having sued such Prisoner, or to the Attorney or Solicitor employed in the Action or Suit then depending for such Debt or Debts, or to the Attorney or Solicitor employed in any Suit for such Debt or Debts before instituted but not depending, if the Court to be established by virtue of this Act shall think fit to allow of Service on such Attorney or Solicitor, instead of personal Service on such Creditor or Creditors.

VI. Provided also, and be it further enacted, That in case of any Defect in the Service of such Petition, Schedule, Oath or Order, it shall be lawful for the said Court from time to time to allow further time for such Purpose, and to make an Order or Orders for adjourning the Hearing of the Matter of the said Petition, in the whole or with respect to any particular Person or Persons, to give Opportunity for such Service; and in case the said Petition, Schedule, Oath and original Order, together with such further Order or Orders, shall be duly served according to the Provisions of this Act, on the Person or Persons not before duly served twenty Days before the Day appointed for hearing the Matter of the said Petition on any such further Order, it shall be lawful for the said Court to proceed on such Service, as the said Court might have done if the said Petition, Schedule, Oath and original Order, had been duly served according to the Provisions before contained in this Act.

VII. And be it further enacted, That upon the Day appointed by the said Court for hearing the Matter of the said Petition, or upon such subsequent Day as the said Court shall appoint for such Purpose, the said Court shall cause such Prisoner to be brought before the said Court, or before such Person or Persons as the said Court shall direct, according to the Provisions of this Act, to be examined touching the Truth of the Matter contained in the said Petition and Schedule; and any of the Creditors of such Prisoner, and any of the Persons named or described in such Schedule, as claiming to be Creditors of any such Prisoner, and any Person or Persons not named or described in such Schedule, who shall claim to be a Creditor or Creditors of such Prisoner, shall be at Liberty to oppose such Petition, and for that Purpose to put such Questions to such Prisoner as the said Court shall think fit, touching the Matters contained in such Petition and Schedule, and touching such other Matters as the said Court shall be of Opinion it may be fit and proper that such Questions should be put for the due Execution of this Act, and such Prisoner shall answer all such Questions upon Oath; and in case such Prisoner shall not so answer all such Questions to the Satisfaction of the said Court, or in case it shall be made appear to the Satisfaction of the said Court, from such Answers as shall be given by such Prisoner or by Evidence, that such Prisoner is not entitled to the Benefit of this Act, then and in such case such Court shall so declare, and shall remand such Prisoner to Custody: Provided always,

that in case such Court shall entertain any Doubt touching any Matter alleged against such Prisoner to prevent his or her Dis- charge, or touching the Examination of such Prisoner, it shall be lawful for such Court to remand such Prisoner to Custody, and afterwards to cause such Prisoner to be again brought up for Examination as often as to such Court shall seem fit.

No. 42.
George III.
c. 1c2.

VIII. Provided always, and be it further enacted, That in case the said Court shall see fit, it shall be lawful for the said Court to order that any Prisoner, instead of being brought before the said Court for Examination, for any of the Purposes of this Act, shall from Time to Time be examined on Oath as Occasion shall require, touching any Matters for the Purposes of this Act, by one or more of his Majesty's Justices of the Peace for the County, Riding, Division or Place, within or near to which such Prisoner shall be detained in Custody, either at a General Session of the Peace, or any Adjournment thereof, or out of Session, who are hereby respectively empowered and required to take such Examination pursuant to such Order; and such Notice shall be given of the Time and Place to be appointed for such Examination as the said Court to be established by virtue of this Act, shall direct; and such Prisoner shall, according to such Order, be carried before the Person or Persons appointed thereby to examine such Prisoner, for which such Order shall be a sufficient Warrant; and such Prisoner shall answer upon Oath all such Questions as shall be put to such Prisoner pursuant to such Order; and the Person or Persons taking such Examination shall certify to such Court the Examination of such Prisoner, and all Matters relating thereto, as such Court shall direct; and such Court shall proceed upon such Certificate in such manner as to such Court shall seem just; and such Examination or Certificate, or either of them, shall not be liable to or charged with any Stamp Duty or Duties whatsoever; and the Clerk of the Peace or other Officer of such Sessions, or the Clerk of such Justice or Justices, shall be paid for every such Examination after the Rate of Four pence for every Folio, for taking and swearing or affirming the same; and the further Sum of Two pence for every Folio for such Certificate, and procuring the Signature of the Justices thereto, and fair Copy of such Examination to return with such Certificate, and no more; and each of such Folio shall contain not less than seventy-two Words.

Court may Order Prisoners to be examined by Justices, either in Session or out of Session, &c. of which Notice shall be given.

Certificate.

Stamp Duty.

Fee.

IX. And be it further enacted, That in case any Person or Persons claiming to be a Creditor or Creditors of any Prisoner, shall oppose the Petition of such Prisoner for his or her Discharge, such Person or Persons, although not duly served with such Petition, Schedule, Oath or Order as aforesaid, shall be considered as having had due Notice thereof, and the Name or Names of such Person or Persons shall be added to the said Schedule by the said Court, either as a Creditor or Creditors, or as claiming to be a Creditor or Creditors of such Prisoner.

Claiming to be Creditors not duly served with Notice, to be added to Schedule.

No. 42.
53 George III.
c. 102.

Court so to
adjudge where
they are of Op-
inion Prisoners
are entitled
to Benefit of
Act, &c.

Assignees ap-
pointed and En-
gagements en-
tered into for
Payment of
Debts not satis-
fied.

Books, &c. of
Prisoner deli-
vered up.

Prisoner dis-
charged, but
Judgment en-
tered against
future Estate.

X. And be it further enacted, That in case the said Court shall be of Opinion that such Prisoner is entitled to the Benefit of this Act, then and in such case the said Court shall so order and adjudge, and shall in such Order specify the several Creditors and Persons claiming to be Creditors of such Prisoner, who shall appear to have been duly served with Notice of such Proceedings, as required by this Act, or with respect to whom Notice shall appear to have been given in the *London Gazette* and other Newspapers, in pursuance of the Order of the said Court for that Purpose, or in such other manner as the said Court shall direct, or who shall have appeared before the said Court, and opposed the Discharge of such Prisoner, or consented to the Proceeding of the Court with respect to their Demands, notwithstanding any Defect of Service of such Notice: and the said Court shall in such Order also specify the several Persons against whose Demands such Prisoner shall be deemed by such Court entitled to be discharged by virtue of this Act; and such Court shall appoint a proper Person or proper Persons to be Assignee or Assignees of the Estate and Effects of such Prisoner, for the Purposes of this Act, and shall order proper Conveyances and Assignments of such Estate and Effects to be made by such Prisoner according to this Act; together with an Engagement to be executed by such Prisoner to pay so much of the just Debts and Demands of the several Persons against whom such Prisoner shall by such Court be adjudged entitled to the Benefit of this Act, as shall not be paid out of the Estate and Effects to be conveyed and assigned by such Prisoner for such Purpose, in case he or she shall at any time thereafter be enabled to pay such Debts and Demands, or to pay such Part or Parts thereof as he or she shall be able at any time to pay; and shall also order all Books, Papers and Writings, in the Custody or Power of such Prisoner, relating to the Estate and Effects of such Prisoner, and the Demands of his or her Creditors, to be delivered on Oath to such Assignee or Assignees, or otherwise to be disposed of as such Court shall direct; and upon the due Execution of all such Conveyances, Assignments and Engagements as aforesaid, and Delivery of such Books, Papers and Writings as aforesaid, as such Court shall direct, such Court shall order such Prisoner to be discharged from Custody, and Judgment shall thereupon be entered in such Court against such Prisoner in pursuance of such Engagements as aforesaid, which Judgment shall and may, if the said Court shall so order, be executed against the future Estate and Effects of such Prisoner, Real and Personal, as the said Court shall direct, and shall bind the Assets of such Prisoner, Real and Personal, in the Hands of his Heirs, Executors and Administrators, for the full Amount of the Debts and Demands aforesaid, which shall remain unsatisfied, or so much of such Debts and Demands as the said Court shall be of Opinion ought to be satisfied, and Execution shall be had upon Judgment in such and the same manner as Execution may

be had upon a Judgment of the Court of King's Bench nevertheless, according to the Orders of the Court to be established by virtue of this Act, and in conformity to the Provisions in this Act contained.

No. 42.
George III.
c. 102.

XI. Provided always, and be it further enacted, That in case any Prisoner who shall be discharged by virtue of this Act, shall be entitled to any Copyhold or Customary Estate, the same shall be surrendered or conveyed by such Prisoner according to the Custom of the Manor of which such Estate shall be holden, either to the Assignee or Assignees of the Estate and Effects of such Prisoner, or to any Purchaser or Purchasers of any such Copyhold or Customary Estate from such Assignee or Assignees, as the said Court shall direct, and the Rents and Profits thereof shall be in the mean time received by such Assignee or Assignees for the Benefit of the Creditors of such Prisoner, without Prejudice nevertheless to the Lord or Lords of the Manor of which any such Copyhold or Customary Estate shall be holden.

Copyhold or
customary Es-
tate surrendered
to Assignees.

XII. And whereas Prisoners discharged by virtue of this Act may be entitled to Annuities for their own Lives, or other uncertain Interests, or to reversionary or contingent Interests, or to Property under such Circumstances, that the immediate Sale thereof for Payment of their Debts may be very prejudicial to them, and deprive them of the Means of Subsistence which they might otherwise have after Payment of their Debts; and it may be proper in some Cases to authorize the raising of Money by way of Mortgage for Payment of the Debts, or Part of the Debts of a Prisoner discharged by virtue of this Act, and defraying Expences attending the Execution of this Act, instead of selling the Property of such Prisoner for such Purposes; Be it enacted, That in all such cases, it shall be lawful for the said Court to take into Consideration all Circumstances affecting the Property of any Prisoner who shall be discharged by virtue of this Act, either at the Time of the Discharge of such Prisoner, or at any subsequent Time; and if it shall appear to the said Court, that it would be reasonable to make any Special Order touching the same, it shall be lawful for the said Court so to do, and to direct that such Property as it may be expedient not to sell, or not to sell immediately, according to the Provisions of this Act, shall not be so sold, and from Time to Time to order and direct in what manner such Property shall be managed for the Benefit of the Creditors of such Prisoner, until the same can be properly sold, or until Payment of all such Creditors according to the Provisions of this Act, and to make such Order touching the Sale or Disposition of such Property as to the said Court shall seem reasonable, considering the Rights of the Creditors of such Prisoner to Payment of their Demands, and the future Benefit of such Prisoner after Payment of his or her Debts, and upon such Terms and Conditions with respect to the Allowance of Interest on Debts not bearing Interest, or other Circumstances, as to the said Court shall seem just; and if it shall appear to the said

Sale of Annu-
ities or contin-
gent Interests
restrained by
Court.

No. 42. Court that the Debts of such Prisoner can be discharged by
 53 George III. means of Money raised by way of Mortgage on any Property
 c. 102. of such Prisoner, instead of raising the same by Sale, it shall be lawful for the said Court so to order, and to give all necessary Directions for such Purpose, and generally to direct all things which may be proper for the Discharge of the Debts of such Prisoner in such manner as may be most consistent with the Interests of such Prisoner, in any Surplus of his or her Effects after Payment of such Debts.

Court may on Complaint of Creditor within one Year, avoid Discharge of Prisoner, on being satisfied that he obtained his Discharge fraudulently.

XIII. Provided always, and be it further enacted, That in case any Creditor against whom any Prisoner shall have obtained his or her Discharge by virtue of this Act, shall within one Year after the Date of the Order for such Discharge, apply to the said Court to avoid such Discharge as improperly obtained, and upon such Application it shall appear to the Satisfaction of the Court that such Prisoner has acted in any manner fraudulently in obtaining such Discharge, or has wilfully concealed any of his or her Estate or Effects by not specifying or not properly specifying the same in such Schedule as aforesaid, for the Purpose of depriving the Creditors against whom he shall have obtained such Discharge of the Benefit thereof, it shall be lawful for such Court to declare the Discharge so obtained by such Prisoner null and void; and it shall thereupon be lawful for any Creditor or Creditors of such Prisoner against whom such Discharge shall have been obtained, to proceed against such Prisoner as if such Discharge had not been obtained, such Creditor or Creditors relinquishing all Benefit of the Assignment of the Estate or Effects of such Prisoner which shall remain unapplied by the Assignee or Assignees appointed under this Act; and any of such Creditors who shall have detained such Prisoner in Custody at the Time of such Discharge shall be at Liberty to apply to such Court to remand such Prisoner again into Custody on the same Process from which he or she had been so discharged; and such Court shall have Power to remand such Prisoner accordingly, by Warrant under the Hand and Seal of the Commissioner of the said Court, which Warrant shall be executed by an Officer of the said Court to be appointed for such Purpose, and shall be sufficient Authority for the Arrest and Detention of such Prisoner, upon the Process from which such Prisoner was before discharged; and so much (if any) of the Estate or Effects of such Prisoner as shall then remain in the Hands of the Assignee or Assignees thereof, after paying all the just Charges and Expences of such Assignee or Assignees to be allowed by the said Court, shall be reconveyed or re-assigned or paid to such Prisoner as the said Court shall direct; but so much of such Estates and Effects as shall have been before applied in Payment of the Debts of such Prisoner, shall be retained by the Creditors who shall have received the same in Part of their respective Demands, excepting only the Creditor or Creditors who shall apply to the Court to avoid such Discharge, who shall repay the Dividend or Dividends received by him, her or them respectively, to the

Assignee or Assignees of the Estate and Effects of such Prisoner, before such Order, declaring such Discharge null and void, shall be delivered out by the said Court. No. 42.
George III.
c. 102.

XIV. And be it further enacted by the Authority aforesaid, That in case any Prisoner who shall have been discharged by virtue of this Act, shall become able to pay all or any Part of the Debts due from him or her, and against which he or she shall have obtained such Discharge, after a reasonable Allowance for the Maintenance of such Debtor, and his or her Family, and Payment of his or her Debts, contracted after such Discharge, or to which such Discharge did not extend, it shall and may be lawful for any Creditor or Creditors against whom he or she shall have obtained such Discharge, to apply to the Court for Liberty to proceed against such Debtor, notwithstanding such Discharge; and in case it shall appear to the Satisfaction of such Court, that such Debtor is of Ability to pay such Demand, or any Part thereof, it shall be lawful for such Court to revoke such Discharge either wholly or upon Payment of such Sum or Sums of Money for the Benefit of the Persons against whom such Discharge shall have been obtained, either in gross, or by several Payments, as to such Court shall appear reasonable, or to permit Execution to be taken out on the Judgment entered up in such Court upon the Engagement of such Prisoner, for such Sum of Money as the said Court shall think fit, to be distributed rateably amongst the Creditors entitled under such Engagement, and such Proceedings shall and may be had according to the Discretion of the said Court from Time to Time, until the whole of the Debts due to the several Persons against whom such Discharge shall have been obtained, shall be fully paid and satisfied, together with such Costs as such Court shall think fit to award: Provided always, that in case any such Application shall appear to the Court to be ill founded and vexatious, it shall be lawful for the Court not only to refuse to make any Order on such Application, but also to dismiss the same, with such Costs as to the Court shall appear reasonable. When it shall appear to Court after Prisoner shall have obtained Discharge that he is able to pay his Debts, Court shall revoke such Discharge.

XV. And be it further enacted, That all and every Person who shall, at any Time after the Expiration of six Calendar Months from the Date of the Appointment of any Assignee or Assignees of the Estate and Effects of any Prisoner under the Authority of this Act, voluntarily come and make Discovery of any Part of such Prisoner's Estate not specified in the said Schedule and not before come to the Knowledge of the Assignee or Assignees of such Prisoner's Estate, either to the said Assignee or Assignees or the Commissioner of the said Court, shall be allowed five Pounds *per Centum*, and such further and other Reward as the said Assignee or Assignees, or the major Part in Value of the Creditors of such Prisoner present at any Meeting of the said Creditors, shall think fit, to be paid out of the net Proceeds of such Prisoner's Estate which shall be recovered on such Discovery, which shall be paid to the Person or Persons so discovering the same by the said Assignee Vexatious Applications.
Allowance for a Discovery of Prisoner's Estate six Months after Appointment of Assignees.

No. 42. or Assignees, who shall be allowed the same in his, her or
 53 George III. their Accounts.
 c. 102.

Disclosure
 of Estate of
 Prisoner six
 Months after
 Discharge.

XVI. And be it further enacted, That all and every Person and Persons who hath or have accepted or shall accept any Trust or Trusts, or shall be possessed of and willfully conceal or protect any Estate Real or Personal, of any Prisoner who shall be discharged under the Authority of this Act, and knowing such Discharge, shall not, within the Space of six Calendar Months after such Discharge, disclose such Trust and Estate in Writing, either to the Assignee or Assignees of such Prisoner's Estate, or to the Commissioner of the said Court, and submit himself, herself or themselves to be examined touching the same on Oath before such Commissioner, or before such Person being a Justice of the Peace as he shall appoint, if thereunto required, and truly discover and disclose the same and all Particulars thereof, shall forfeit the Sum of one hundred Pounds of lawful Money of *Great Britain*, and Double the Value of the Estate whether Real or Personal so concealed, to and for the Use of the Creditors of such Prisoner, to be recovered by Action of Debt in any of his Majesty's Courts of Record at *Westminster*, in the Name of the Assignee or Assignees of such Prisoner, or of any one of his, her or their Creditors who shall first sue for the same, with full Costs of Suit.

Penalty.

On Prisoner
 dying leaving
 Assets sufficient,
 Creditors
 may apply to
 Court to proceed
 on Judgment entered
 into on his Engagement
 to pay Debts not
 satisfied.

XVII. And be it further enacted, That in case any Prisoner who shall have been discharged by virtue of this Act, shall die leaving Assets Real or Personal, after Payment of all his or her Debts, exclusive of the Debts from which such Prisoner shall have obtained such Discharge, it shall be lawful for the Person or Persons entitled to so much of such Debt or Debts, from which such Discharge shall have been obtained as shall remain unpaid, to apply to the said Court for Liberty to proceed on the Judgment entered in the said Court on the Engagement of such Prisoner, in order to obtain Payment of so much of such Debt or Debts as shall then remain due as aforesaid, and such Court shall make such Order thereupon as shall be just; and the Heirs, Executors or Administrators of such deceased Prisoner shall apply the Assets in his, her, or their Hands, according to such Order, but without Prejudice to the Demand of any other Creditor or Creditors of such deceased Prisoner, all of which shall be first paid or satisfied: Provided always, that in case it shall at any Time be made appear to such Court, that the Estate or Effects of such Prisoner, conveyed or assigned under the Authority of this Act, would have been sufficient, if carefully and properly managed, to have satisfied all the Debts from which such Prisoner had been discharged, or to have satisfied a larger Proportion of such Debts than shall have actually been paid therewith, then and in any such case such Court shall not authorize any further Proceedings against such Prisoner, or his or her Assets, except for so much of the Debts of such Prisoner as could not have been satisfied out of the Estate and Effects so conveyed and assigned

in case the same had been carefully and properly managed and rendered productive for the Discharge of such Debts: Provided also, that in no case Interest shall be allowed on any such Debt from the Time of such Discharge, until the said Court shall order that Interest shall again run upon Debts bearing Interest, which shall be wholly in the Discretion of the said Court as hereinafter provided.

No. 42.
53 George III.
c. 102.
Interest.

XVIII. And be it further enacted by the Authority aforesaid, That all the Estate, Right, Title, Interest, and Trust every Prisoner who shall be discharged by virtue of this Act, of, in and to all the real Estate as well freehold or customary, and of, in and to all the personal Estate, Debts and Effects of every such Prisoner, shall immediately from and after the Order of such Court as aforesaid for the Discharge of such Prisoner, be and the same are hereby vested in the Person or Persons to whom the same shall, by the Order of the said Court be directed to be conveyed and assigned as aforesaid, in case such Person or Persons shall consent to accept the same; and the Conveyance and Assignment which shall be made in pursuance of such Order shall be without Stamps, and shall, together with this Act be good and effectual in Law, to all Intents and Purposes whatsoever, to vest the Estate and Effects therein comprised in the Person or Persons to whom the same shall, by Order of such Court, be directed to be conveyed and assigned as aforesaid, his, her, or their Heirs, Executors, Administrators and Assigns, according to the Estate and Interest which the Prisoner had therein, and every such Conveyance and Assignment shall be in Trust for the Benefit of the Creditor or Creditors of every such Prisoner against whom such Prisoner shall have obtained his or her Discharge by virtue of this Act, in respect of and in proportion to the Debts justly due to them respectively; and every Person and Persons to whom any such Assignment and Conveyance as aforesaid shall be made, is and are hereby empowered to sue from time to time, as there may be Occasion, in his, her or their own Name or Names, for the Recovery and obtaining Possession of any Estate or Effects of any such Prisoner, and also to execute any Power vested in or created for the Use and Benefit of any such Prisoner, and to give such Discharge and Discharges to any Person or Persons who shall respectively be indebted to such Prisoner, as may be requisite: Provided always, That nothing herein contained shall extend to prejudice or affect any Estate, Interest or Right whatsoever, of any Person or Persons, other than such Prisoner, expectant upon or subject to any Estate or Interest of such Prisoner so vested in such Assignee or Assignees as aforesaid, but that the Estate, Interest and Right whatsoever of every other Person and Persons shall continue and remain and be secured to him, her and them respectively, in the same Manner as if this Act had not been made.

Estate of Pri-
soner
by
Court
direct-
convey-
Benefit of Cre-
ditors.

Proviso.

XIX. And be it further enacted by the Authority aforesaid, That every such Assignee or Assignees as aforesaid shall,

No. 42.
53 George III.
c. 102.

Assignees to
get in Estate
and Effects of
Prisoner, and
make Dividend
to Creditors at
the End of three
Months, &c.

with all convenient Speed, after his, her or their accepting such Assignment or Conveyance, use his, or her, or their best Endeavours to receive and get in the Estate and Effects of every such Prisoner, and shall, with all convenient Speed, make Sale of all the Estate and Effects of such Prisoner vested in such Assignee or Assignees; and if such Prisoner shall be interested in or entitled to any real Estate, either in Possession, Reversion, or Expectancy, the same, within the Space of two Months after such Assignment and Conveyance, shall be sold by public Auction, in such manner, and at such Place or Places, as the major Part of the Creditors of such Prisoner entitled to the Benefit thereof, who shall assemble together on any Notice in Writing published in the *London Gazette*, and in some daily Paper printed and published in *London*, or within the Bills of Mortality, if the Prisoner, before his or her going to Prison, resided in *London*, or within the Bills of Mortality; and if such Prisoner resided elsewhere, then in some printed Newspaper which shall be published and generally circulated in or near the County, Riding, Division, City, Town, Liberty or Place in which such Prisoner resided before he or she was committed to Prison, thirty Days before any such Sale shall be made, shall, under his, her or their Hand or Hands, approve; and every such Assignee or Assignees, at the End of three Months at the farthest from the Time of his, her or their accepting any such Assignment or Conveyance as aforesaid, and so from Time to Time as Occasion shall require, shall make a fair and just Dividend of all such Prisoner's Estate and Effects which shall have been then recovered amongst such Creditors of such Prisoner, from whose Demand such Prisoner shall have obtained a Discharge as before mentioned, in Proportion to the just Debts due to them respectively; but before any such Dividends shall be made, such Assignee or Assignees shall make up an Account of such Prisoner's Estate, and make Oath in Writing before an Officer of the said Court to be appointed for that Purpose; or before one or more Justice or Justices of the Peace for the County, Riding, Division, City, Town, Liberty or Place in which such Assignee or Assignees shall reside, that such Account contains a fair and just Account of the Estate and Effects of every such Prisoner got in by or for such Assignee or Assignees, and of all Payments made in respect thereof, and that all Payments in every such Account charged were truly and *bona fide* made and paid, which Account so sworn shall be filed with the proper Officer of the said Court, and Notice of the making of every such Dividend shall be published in like manner as a Meeting of Creditors is hereinbefore directed to be published, thirty Days at least before such Dividend shall be made; and no Creditor shall be allowed to receive any Share of such Dividend until he shall have made due Proof of his or her Debt; by Oath, before some such Justice or Justices of the Peace; and if such Prisoner, or his or her Assignee or Assignees, or any Creditor of such Prisoner, shall object to any Debt so claimed, the same shall be

examined into by the said Court, who shall have full Power for that Purpose, to require and compel the Production of all 53 No. 42.
George III.
c. 102.
Books, &c.
produced. Books, Papers and Writings which may be necessary to be produced, as well by the Person or Persons claiming such Debt, as by the Prisoner against whom the same shall be claimed, or his or her Assignee or Assignees, and to examine all such Persons and their Witnesses on Oath, as the Nature of the Case may require, and to take all other Measures necessary for the due Investigation of such Claim; and the Decision of the said Court upon such Claim shall be conclusive with respect to any Dividend of the Effects of such Prisoner under the Provisions of this Act.

XX. And be it further enacted, That in case the Prisoner so discharged, or any of his or her Creditors, against whom he or she shall have obtained such Discharge, shall be dissatisfied with the Account of any Assignee or Assignees, rendered upon Oath as aforesaid, or in case any such Assignee or Assignees shall neglect to render such Account, or shall neglect to dispose of the Property or collect the Effects of such Prisoner, or shall in any Manner waste or mismanage the Estate or Effects of such Prisoner, or neglect to make a due Distribution thereof, it shall be lawful for such Court, upon the Application of such Prisoner, or of any such Creditor as aforesaid, to require such Assignee or Assignees to render such Account on Oath as directed by this Act, if not before rendered, and to examine any Account so rendered, and to enquire into any Waste, Mismanagement or Neglect of the Estate or Effects of such Prisoner, and direct a proper Administration thereof, and ascertain the Produce of such Estate and Effects to be divided amongst the Creditors of such Prisoner, and direct the Distribution thereof accordingly, and to require and compel the Production of all Books, Papers and Writings necessary 7 Court to compel Assignees to give a satisfactory Account of Effects of Prisoner. for such Purposes, and to examine all Parties and their Witnesses on Oath, as the case may require, and to take all such Measures as shall be necessary for the compelling the rendering of such Account and the due Investigation thereof, and the proper Disposition and Distribution of the Effects of such Prisoner according to this Act, and to award Costs against any of the Parties, as Justice shall require; and the Decisions of the said Court upon all such Matters shall be final and conclusive. Books, &c.
produced.

XXI. And be it further enacted, That all and every Creditor and Creditors of any Prisoner who shall be discharged by virtue of this Act for any Sum or Sums of Money payable by way of Annuity or otherwise, at any future time or times, by virtue of any Bond, Covenant or other Security of any Nature whatsoever, shall be entitled to be admitted a Creditor or Creditors, and to receive a Dividend or Dividends of the Estate of such Prisoner, in such Manner, and upon such Terms and Conditions as such Creditor or Creditors would have been entitled unto such Dividends by the Laws now in force, if such Prisoner had become Bankrupt, and without Prejudice in future to their respective Securities, otherwise than as the same Creditors for Annuities, &c. entitled to Dividends in such manner as if Prisoner had become Bankrupt, &c.

No. 42. would have been affected by Proof made in respect thereof by
 53 George III. the Creditor under a Commission of Bankrupt, and a Certifi-
 c. 102. cate obtained by the Bankrupt under such Commission, but
 subject nevertheless to the Terms of the Engagement of such
 Prisoner for future Payment of his or her Debts, in case such
 Prisoner should become able to pay the same as hereinbefore
 directed.

Interest on
 Debts of Prisoner to cease,
 unless his Effects are sufficient
 to bear it.

XXII. Provided always, and be it further enacted, That from the Date of any such Order of Discharge as aforesaid, all Interest on any Debt bearing Interest of the Prisoner so discharged, shall cease, and shall not be computed in the Amount of such Debt in the Distribution of the Estate and Effects of such Prisoner under the Authority of this Act, but if it shall appear to the Satisfaction of the said Court that such Estate and Effects alone or together with the future Estate and Effects of such Prisoner, are not only sufficient for Payment of the Principal of all the Debts of such Prisoner payable thereout under the Authority of this Act, together with all other Debts of such Prisoner, and to afford such Prisoner competent Means of future Subsistence, but are so considerable as to render it fit that Interest should be allowed on Debts of such Prisoner bearing Interest from any Period after the Date of such Order of Discharge, it shall be lawful for the said Court to order such Interest to be paid accordingly, and to fix the Time from which such Interest shall be computed, having regard always to the unproductive State of the Effects of such Prisoner during the Administration thereof, under the Authority of this Act.

Assignees not
 to commence
 any Suit with-
 out Consent of
 Creditors.

XXIII. And be it further enacted, That no Suit in Law or Equity shall be commenced by any Assignee or Assignees of any such Prisoner's Estate and Effects without the Consent of the major Part in Value of the Creditors of such Prisoner, who shall meet together pursuant to a Notice for that Purpose, to be given at least ten Days before such Meeting, in the *London Gazette*, or other Newspaper, as hereinbefore required, previous to the Sale of any Estate of such Prisoner.

Officer of Court
 to produce its
 Proceedings
 when required.

XXIV. And be it further enacted, That the proper Officer of the Court to be established by virtue of this Act shall, on the reasonable Request of such Prisoner, or of any Creditor or Creditors of such Prisoner, or his, her, or their Attorney, produce and shew to such Prisoner, Creditor or Creditors, or his, her or their Attorney, at such Times as the said Court shall direct, such Petition, Schedule, Oath, Order and Judgment, and all other Orders and Proceedings made and had in such Matter; and that a true Copy of every such Petition, Schedule, Oath, Order, Judgment and other Proceedings, signed by the Officer in whose Custody the same shall be, or his Deputy, certifying the same to be a true Copy of such Petition, Schedule, Order, Judgment, or other Proceeding, as the case may be, without being written on stamped Paper, shall at all Times be admitted in all Courts whatever, as legal Evidence of the same respectively.

Copy, Evi-
 dence.

XXV. Provided also, and be it further enacted, That nothing in this Act shall extend or be construed to prevent any Mortgage, Charge, or Lieu, upon the Estate of such Prisoner, or any Part thereof, made prior to the Discharge of such Prisoner by virtue of this Act, to take place upon the Lands, Tenements or Hereditaments, or personal Estate and Effects comprised in or charged or affected by such Mortgage, Charge or Lieu respectively, nor to prevent any Statute Staple, Statute Merchant, Recognizance, or Judgment acknowledged by or obtained against any such Prisoner, prior to such Discharge, to take place upon the Lands, Tenements, or real Estates of such Prisoner, and also where any Inquisition shall have been taken upon any Statute or Recognizance, or any Writ or Execution shall have been taken out and delivered to the Sheriff or proper Officer upon any such Judgment, before such Prisoner shall have obtained his or her Discharge as aforesaid, the personal Estate of such Prisoner shall be subject thereto, for so much as shall remain due upon such Statute, Recognizance or Judgment respectively, in like manner as the same would have been subject respectively, if this Act had not been made; any thing herein before contained to the contrary notwithstanding.

No. 42.

George III.
c. 102.Mortgages,
&c. on Estate of
Prisoner not to
be affected, &c.

XXVI. And whereas a Prisoner who may be entitled to and claim the Benefit of this Act, may be seized and possessed of or entitled to Lands, Tenements, or Hereditaments, to hold to such Prisoner for the Term of his or her Life, or other limited Estate, with Power of granting Leases either at Rack Rents, or taking Fines and reserving small Rents for one, two or three Lives, in Possession or Reversion, or for some Number of Years determinable upon Life or Lives, or for Years absolute, or may have Powers over real or personal Estate, which such Prisoner could execute for his or her own Advantage, and which said Powers ought to be executed for the Benefit of the Creditors of such Prisoner; Be it therefore enacted by the Authority aforesaid, That in every such case all and every the Powers of Leasing, and all such other Powers as aforesaid, over real or personal Estate, which are or shall be vested in any such Prisoner as aforesaid, shall be and are hereby vested in the Assignee or Assignees of the real and personal Estate of such Prisoner by virtue of this Act, to be by such Assignee or Assignees executed for the Benefit of all and every the Creditors of such Prisoner as aforesaid.

Power of leasing of Lands, &c. in Prisoner, vested in Assignees for Benefit of Creditors.

XXVII. Provided always, and be it further enacted, That nothing in this Act contained shall extend to entitle the Assignee or Assignees of the Estate and Effects of any Prisoner being an Officer of the Army or Navy, or beneficed Clergyman or Curate, to the Pay of such Officer, or the Income of any Benefice or Curacy, for the Purposes of this Act: Provided always, nevertheless, that it shall be lawful for such Assignee or Assignees to apply for and obtain a Sequestration of the Profits of any such Benefice, for the Payment of the Debts of any such Clergyman, against which such Clergyman

Pay of Officer or Income of any Benefice not affected; but Assignees may obtain a Sequestration of Profits of such Benefice.

No. 42. shall have obtained a Discharge by virtue of this Act; and the
 53 George III. Order for such Discharge shall be a sufficient Warrant for the
 c. 102. granting of such Sequestration, without any Writ or other
 Proceeding to authorize the same; and such Sequestration shall
 accordingly be issued as the same might have been issued
 upon any Writ of *Levari Fencias* founded upon any Judgment
 against such Clergyman: Provided also, that it shall be lawful
 for the said Court to order such Portion of the Pay or Half Pay
 of any such Officer of the Army or Navy, as on Communica-
 tion from the said Court to the Secretary at War, or the Lords
 Commissioners of the Admiralty or their Secretary, he or they
 may respectively consent to by Writing under the Hand of the
 said Secretary at War, or the Lords Commissioners or Secre-
 tary of the Admiralty, to be applied in Payment of his Debts,
 and for that Purpose to be paid to his Assignee or Assignees,
 and such Order and Consent being lodged in the Office of the
 Paymaster of his Majesty's Forces, or of the Treasurer of the
 Navy, as the case shall require, such Paymaster or Treasurer
 shall give Directions accordingly, and such Proportion of the
 Pay or Half Pay of such Officer as shall be specified in such
 Order and Consent shall be paid to his Assignee or Assignees,
 until the said Court shall make Order to the contrary.

Perjury.

XXVIII. And be it further enacted, That if any Prisoner
 who shall apply for his or her Discharge under the Provisions
 of this Act, or any other Person taking an Oath under the
 Provisions of this Act, shall wilfully forswear and perjure him-
 self or herself in any Oath to be taken under this Act, and
 shall be lawfully convicted thereof, he or she so offending shall
 suffer such Punishment as by Law may be inflicted on Persons
 convicted of wilful and corrupt Perjury.

Prisoner dis-
 charged not to
 be arrested for
 same Debt.

XXIX. And be it further enacted, That no Prisoner who
 shall have obtained his or her Discharge by virtue of this Act,
 shall at any Time after such Discharge, so long as the same
 shall remain in force, be imprisoned by reason of any Judg-
 ment or Decree obtained for Payment of Money only, or for
 any Debt, Damages, Contempt for Non-payment of Money,
 Costs or Sums of Money contracted, incurred, occasioned,
 owing or growing due, with respect to which such Discharge
 shall have been obtained, but that upon every Arrest upon any
 such Judgment or Decree, or for any such Debt, Damage,
 Contempt, Costs, Sum and Sums of Money, it shall and may be
 lawful for any Judge of the Court from which any such Process
 shall have issued, upon shewing to such Judge the Copy of the
 Order for such Discharge as aforesaid, and upon Affidavit that
 such Discharge still remains in force, to release from Custody
 such Prisoner as aforesaid; and at the same Time, if such
 Judge shall in his Discretion think fit, to order the Plaintiff or
 Plaintiffs in such Suit or Suits, or other Person or Persons suing
 out such Process, to pay such Prisoner the Costs which he
 or she shall have incurred on such Occasion, or so much thereof
 as to such Judge shall seem just and reasonable, such Prisoner

causing a common Appearance to be entered for him or her in the Action or Suit for any such Debt as aforesaid.

No. 42.
53 George III.
c. 102.

XXX. Provided always, and be it further enacted, That no Prisoner shall be discharged by virtue of this Act, of any Debt or other Matter accrued or incurred subsequent to the Application of such Prisoner to be so discharged; and if it shall appear to the Court to be established by virtue of this Act, that any Prisoner applying to be discharged as aforesaid, stands charged in Custody with any Debt or other Matter accrued or incurred subsequent as well as previous to such Application, then and in such case it shall and may be lawful to and for such Court to discharge the Person of such Prisoner only from such Debts or other Matters as had accrued or been incurred previous to such Application, and to remand him or her back to the Custody of the Keeper of the Prison from whence he or she was brought, for all Debts and other Matters for which he or she shall stand charged, and which shall have accrued or been incurred subsequent to such Application.

Prisoner not to be discharged of any Debt incurred subsequent to Application for Discharge.

XXXI. And be it further enacted, That if any Action of Escape, or any Suit or Action be brought against any Judge, Justice of the Peace, Sheriff, Gaoler or Keeper of any Prison, or other Person, for performing the Duty of his Office, in pursuance of this Act, such Judge, Justice, Sheriff, Gaoler or Keeper, or other Person may plead the General Issue, and give this Act in Evidence; and if the Plaintiff be nonsuited or discontinue his or her Action, or Verdict shall pass against him or her, or Judgment should be had upon Demurrer, the Defendant shall have Treble Costs.

General Issue.
Treble Costs.

XXXII. And be it further enacted, That if any *Scire Facias*, or Action of Debt, or upon Judgment or any other Suit or Action shall be brought against any Prisoner, his or her Heirs, Executors or Administrators, upon any Judgment obtained against any such Prisoner, or any Statute or Recognizance acknowledged by him or her, or any other Cause of Action from which such Prisoner shall have obtained his or her Discharge, by virtue of this Act, except under the Order of Court to be established by virtue of this Act, it shall and may be lawful for any such Prisoner, his or her Heirs, Executors or Administrators, to plead generally that such Prisoner was duly discharged from such Debt or Demand, according to this Act, by the Order by which such Discharge shall have been obtained, and that such Discharge remains in force, without pleading any other Matter specially, whereto the Plaintiff or Plaintiffs shall or may reply generally, and deny the Matters pleaded as aforesaid, or reply any other Matter or Thing, which may shew the Defendant or Defendants not to be entitled to the Benefit of this Act, or that such Prisoner was not duly discharged according to the Provisions of this Act, in the same manner as the Plaintiff or Plaintiffs might have replied, in case the Defendant or Defendants had pleaded this Act, and his Discharge by virtue of this Act specially; and if the Plaintiff or Plaintiffs be nonsuited, discontinue his or her Ac-

Action against Prisoner discharged, how defended.

No. 42. tion, or Verdict pass against him, her or them, or Judgment
 53 George III. shall be had on Demurrer, the Defendant or Defendants shall
 c. 102. have double Costs.

Prisoner wan-
 tonly wasting
 Effects in Pris-
 on, not enti-
 tled to Benefit
 of Act.

XXXIII. Provided always, and be it further enacted, That in case it shall appear to the Satisfaction of the Court to be established by virtue of this Act, that any Prisoner who shall apply for a Discharge by virtue of this Act, has wantonly wasted his or her Estate or Effects whilst in Prison, or fraudulently disposed thereof, or any Part thereof, with Intent to deprive his or her just Creditors of the Benefit thereof, or lawfully remained in Prison, although entitled to be discharged therefrom by virtue of this Act, or otherwise with Intent to consume his or her Property in Prison, instead of applying the same to the Discharge of his or her just Debts, such Prisoner shall not be entitled to the Benefit of this Act, unless on special Circumstances the said Court shall think fit to grant such Discharge.

Attornies,
 Servants, &c.
 embezzling
 Money, not en-
 titled to Benefit
 of Act, unless
 Creditors con-
 sent, or Prisoner
 confined ten
 Years.

XXXIV. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to release or discharge any Attorney at Law, Solicitor, or any other Person acting or pretending to act as such with regard to any Debt or Demand for any Money or other Effects recovered or received by him for the Use of any Person or Persons, Bodies Corporate or Politic, and by any such Attorney, Solicitor or other Person acting as such, embezzled, concealed or converted to his own Use; or to release or discharge any Servant or other Person employed or entrusted as such, with regard to any Debt or Demand for or on account of any Money, Goods or other Effects received or possessed by him or her for the Use or Account of his or her Master or Masters; or Employer or Employers, and by such Servant or other Person so embezzled, concealed or converted to his or her own Use; or to release or discharge any Person with regard to any Debt or Demand arising from or created by any Breach of Trust or Confidence; any thing herein contained to the contrary thereof in any wise notwithstanding; unless the Person or Persons to whom such Debt or Demand shall be due or owing shall consent to the Discharge of such Prisoner by virtue of this Act, or unless such Prisoner shall have been confined in Prison for such Debt or Demand for the Space of ten Years before the Time when such Prisoner shall apply for his or her Discharge by virtue of this Act.

No Prisoner
 obtaining Credit
 by false Pretences
 or removing
 Effects liable to
 be distrained for
 Rent, entitled to
 Benefit of Act,
 unless Creditors
 consent or Pris-
 oner confined
 five Years.

XXXV. Provided also, and be it further enacted, That no Prisoner, who knowingly and designedly, by false Pretence or Pretences, or under any fictitious Name or Names, assumed for the Purposes of obtaining Credit, or by any other fraudulent means shall have obtained from any Person or Persons Money, Goods, Wares, Merchandizes, Bonds, Bills of Exchange, Promissory Notes, or other Securities for Money, or other Effects; or who shall have contracted any Debt by fraudulently obtaining false Credit or by any other fraudulent means, or who shall have fraudulently removed or caused

to have been removed any Stock, Cattle, Goods or Effects of the Value of thirty Pounds or upwards, which were subject or liable to be distrained by his or her Landlord or Landlords for any Rent or Rents, whereby such Landlord or Landlords shall have lost all or some Part of such Rent or Rents, shall have any Discharge by or under this Act, from the Debt or Demand arising from or remaining due in consequence of such fraudulent Conduct; unless the Person or Persons who shall be entitled to such Debt or Demand shall consent to the Discharge of such Prisoner by virtue of this Act, or such Prisoner shall have been confined in Prison for such Debt or Demand for the Space of five Years before the time when such Prisoner shall apply for his or her Discharge by virtue of this Act.

No. 42.
George 111.
c. 102.

XXXVI. Provided also, and be it further enacted, That no Prisoner who shall have suffered any Person, who has become Bail or Surety for such Prisoner, to be charged in respect of such Bail or Surety, shall be discharged by virtue of this Act from any Debt or Demand arising on such Account, without the Consent of the Person or Persons entitled to such Debt or Demand.

Prisoner suffering Bail to be charged.

XXXVII. Provided also, and be it further enacted, That no Prisoner who shall be charged in Execution for Damages recovered in any Action for Criminal Conversation with the Wife of the Plaintiff in such Action, or in any Action for educating or carnally knowing the Daughter or Female Servant of the Plaintiff in such Action, or in any Action for a malicious Prosecution, or in any Action for any other malicious Injury, shall have any Discharge from any Debt or Damages under this Act, unless the Person or Persons entitled to the Benefit of such Debt or Damages shall consent to the Discharge of such Prisoner by virtue of this Act; or unless such Prisoner shall have been confined in Prison, for such Debt or Damage, for the Space of five Years before the time when such Prisoner shall apply for his or her Discharge under this Act.

Prisoner charged in Execution for Damages recovered in certain Actions, not entitled to Discharge without Consent of Person injured, or unless confined five Years.

XXXVIII. Provided also, and be it further enacted, That no Prisoner against whom any Commission of Bankrupt shall have issued and shall remain in force, and who shall not have obtained a Certificate of his or her Conformity to the several Statutes concerning Bankrupts under such Commission, shall be entitled to be discharged by virtue of this Act from any Debt for which such Prisoner shall be detained in Custody, and which might have been proved under such Commission, unless such Prisoner shall have been so detained in Prison for the Space of five Years before the time when such Prisoner shall apply for his or her Discharge under this Act.

Bankrupt who shall not have obtained his Certificate, &c.

XXXIX. And whereas Debtors may, with a view to defraud their Creditors, sell, transfer, convey or assign their Estate and Effects, or some Part thereof, but it may be difficult to prove that such Sale or Transfer, Conveyance or Assignment, was made with a fraudulent Design; Be it enacted, That whenever it shall be proved by one or more credible Witness or Witnesses, or by the Confession of any Prisoner, Prisoner assigning Estate after Imprisonment, so that Creditors can-

Prisoner assigning Estate after Imprisonment, so that Creditors can-

No. 42. who shall apply for his or her Discharge by virtue of this Act, 53 George III. that such Prisoner has, since the time of contracting any Debt c. 102. of or from which he or she shall so seek to be discharged, sold, transferred, conveyed or assigned to any Person or Persons all or any Part of his Estate or Effects subsequent to the time of his Imprisonment, without just Cause for so doing (to be determined by the Court to be established by virtue of this Act), and such Sale, Transfer, Conveyance or Assignment, shall remain in force, so that the Creditors of such Prisoner cannot have the Benefit of such Estate or Effects under this Act; without Suit at Law or Equity, every such Prisoner shall lose all the Benefit and Advantage that he or she might otherwise have claimed under the Authority of this Act, unless all the Creditors of such Prisoner against whom such Prisoner shall seek to be discharged by virtue of this Act will consent to such Discharge.

Prisoner losing Money by Gaming not to have Benefit of Act, unless with consent of Creditors, or confined five Years.

‘XL. And whereas many Prisoners squander their Property by playing at Cards, Dice, and other unlawful Games, whilst in Prison, to the great Injury of their Creditors;’ Be it enacted, That nothing in this Act shall extend or be construed to extend to discharge or release any Prisoner who hath or shall have lost, since the time of his or her Commitment to Prison for any Debt with which he or she shall stand charged at the time when Application shall be made for his or her Discharge by virtue of this Act, the Sum or Value of ten Pounds in any one Day, or fifty Pounds in the whole, since such Commitment as aforesaid, in playing at or with Cards, Dice, Tables, Tennis, Bowls, Billiards, or any other Game or Games whatsoever, or in or by bearing a Share or Part in the Stakes, Wagers or Adventures, or in or by betting on the Sides or Hands of such as do play as aforesaid, unless all the Creditors of such Prisoner against whom such Prisoner shall seek to be discharged by virtue of this Act shall consent to such Discharge, or unless such Prisoner shall have been confined in Prison for the Space of five Years at the least, since the time when any such Money was so lost as aforesaid.

Prisoner who shall have made Conveyance of Estate in Trust for particular Creditors not to have Benefit of Act.

‘XLI. Provided also, and be it further enacted, That if any Prisoner seeking the Benefit of this Act, shall appear to the Court to whom Application shall be made for such Purpose, to have made, within five Years before the Application of such Prisoner to be discharged by virtue of this Act, any Conveyance or Assignment of all or any Part of his or her Estate or Effects in Trust or otherwise for the Benefit of any particular Creditor or Creditors, with Intent to give an undue Preference to such Creditor or Creditors, and afterwards to obtain a Discharge from the Demands of any other Creditor or Creditors by virtue of this Act; such Prisoner shall have no Benefit of this Act, unless such Person or Persons for whose Benefit any such Conveyance or Assignment shall have been made shall first relinquish the same; and all such Estate and Effects shall be conveyed or delivered to such Person or Persons as the Court shall direct, for the Benefit of all the Creditors of

such Prisoner under the Provisions of this Act; or unless No. 42.
all the Creditors against whom such Discharge shall be sought 51 George III.
shall consent thereto. c. 102.

XLII. And whereas the Estates both real and personal
of any Prisoner who may be discharged by virtue of this Act
may not be sufficiently described or discovered in the Schedule
before directed to be delivered upon Oath by such Prisoner,
or the Assistance of such Prisoner may be necessary to adjust,
make out, recover or manage his Estate or Effects for the
Benefit of his or her Creditors; Be it therefore enacted
by the Authority aforesaid, That it shall and may be lawful to
and for the Assignee and Assignees of the Estate and Effects
of any such Prisoner who shall obtain his or her Discharge in
pursuance of this Act, from time to time to apply to the Court
to be established by virtue of this Act, that such Prisoner may
be further examined as to any Matters or Things relating to his
or her Estate and Effects, either by such Court, or by any Jus-
tice of the Peace for the County, Riding, Division or Place
where such Prisoner shall then reside; and if such Court shall
direct any such Examination before any such Justice, such Jus-
tice shall send for or call before him such Prisoner, by such
Warrant, Summons, Ways or Means as he shall think fit; and
if such Prisoner shall appear before such Justice, such Justice
shall examine him or her upon Oath, or otherwise, as to such
Matters and Things as such Assignee or Assignees shall desire
relating to the Estate and Effects of such Prisoner; and if any
such Prisoner, on Payment or Tender of Payment of such
reasonable Charges as such Justice shall judge sufficient, shall
neglect or refuse to appear before such Justice, not having a
lawful Excuse allowed by such Justice, or, being come before
such Justice, shall refuse to be sworn or to answer such Ques-
tions as by such Justice shall be put to him or her, relating to
the Discovery of his or her Estate and Effects vested or intend-
ed to be vested in such Assignee or Assignees as aforesaid, as
required by the Order of the said Court, such Justice shall cer-
tify such Default to the said Court, and thereupon, and also in
case such Prisoner shall neglect or refuse to appear before such
Court to be examined by such Court, if the Court shall think
fit so to order, or, appearing before such Court, shall refuse to
be sworn, or to answer such Questions as shall be put to him
or her relating to the Discovery of his or her said Estate
or Effects, then and in any of such cases it shall be lawful for the
Commissioner of such Court, by Warrant under his Hand and
Seal, to commit such Prisoner so offending to the Common
Gaol of any County or Place, there to remain without Bail or
Mainprize, until such time as he or she shall submit himself or
herself to such Commissioner, and answer upon Oath
or otherwise as shall be required, to all such lawful Questions
as shall by such Commissioner be put or ordered to be put
to him or her for the Purposes aforesaid.

Assignees may
apply to the
Court to have
Prisoner who
has obtained his
Discharge, fur-
ther examined.

Imprison-
ment.

XLIII. And be it further enacted, That it shall and may
be lawful at all times hereafter, for any Assignee or Assignees
Assignees with
Consent of Ma-
jority of Cred-

No. 42. of the Estate and Effects of any Prisoner discharged by virtue
 53 George III. of this Act, by and with the Consent of the major Part
 c. 102. in value of the Creditors of such Prisoner who shall be present
 at a Meeting to be had on twenty-one Days' Notice being pre-
 viously given for the Purpose in the *London Gazette*, if the Pri-
 soner was in Custody in *London*, or within the Weekly Bills
 of Mortality, at the time of his or her Discharge, and if not,
 then in some Newspaper which shall be published and circu-
 lated in the County, City or Place in or near which such Pri-
 soner shall have been so in Custody, to make Composition with
 any Person who shall be a Debtor or Accountant to such Pri-
 soner, where a Composition shall appear necessary or rea-
 sonable, and to take such reasonable Part of any Debt due to
 such Prisoner as can upon any such Composition be gotten, in
 full Discharge of such Debt, and also to submit to Arbitration,
 any Difference or Dispute between such Assignee or Assignees,
 and any Person or Persons, for or on account or by reason of
 any Matter, Cause or Thing, relative to the Estate or Effects
 of such Prisoner; and every such Assignee or Assignees is or
 are hereby indemnified for what he, she or they shall fairly do
 in the Premises, in pursuance of this Act.

Court may
 hear Complaints
 against Assign-
 nees, and may
 remove them.

XLIV. And be it further enacted by the Authority afore-
 said, That it shall and may be lawful to and for the said Court
 to be established by virtue of this Act, from time to time, upon
 the Petition of any Prisoner, or of any Creditor or Creditors of
 such Prisoner, complaining of any Insufficiency, Fraud or
 Misconduct of any Assignee or Assignees of the Estate and Ef-
 fects of such Prisoner, to summon all Parties concerned, and upon
 hearing the Parties concerned, to make and give such Orders
 and Directions therein, either for the Removal of such Assign-
 nee or Assignees and appointing any new Assignee or Assign-
 nees in the Place of such Assignee or Assignees so to be
 removed, and for the prudent, just and equitable Manage-
 ment and Distribution of the Estate and Effects of any such
 Prisoner, for the Benefit of his or her Creditors, as the said
 Court shall think fit; and in case of the Removal of any Assign-
 nee or Assignees, and the appointing of any new Assignee or
 Assignees, the Estate and Effects of such Prisoner shall from
 thenceforth be divested out of the Assignee or Assignees
 so removed, and be vested in and delivered over to such
 new Assignee or Assignees, in the same manner, and for the
 same Intents and Purposes as the same were before vested
 in the Assignee or Assignees first appointed; any thing in this
 Act contained to the contrary notwithstanding.

In case of
 Death or Incap-
 acity of Assign-
 nee, another
 appointed.

XLV. And be it further enacted, That in case of the
 Death or Incapacity of any Assignee of the Estate and Effects
 of any Prisoner discharged by virtue of this Act, or in case any
 Assignee shall be unwilling to Act as Assignee, it shall and
 may be lawful to and for any Creditor of such Prisoner to apply
 to the said Court to appoint a new Assignee or Assignees, with
 like Powers and Authorities as are given by this Act to
 the original Assignee or Assignees; and the said Court shall

have Power to appoint such new Assignee or Assignees, and to oblige any Assignee who shall be removed, and the Heirs, Executors, Administrators and Assigns of any deceased Assignee, to account for and deliver up all such Estate and Effects, Books, Papers, Writings, Deeds, and all other Evidences relating thereto, as shall remain in his, her or their Hands, to be applied for the Purposes of this Act; and the Decision of the said Court thereupon shall be final and conclusive.

No. 42.
George III.
c. 102.

XLVI. And be it further enacted, That in case any Assignee or Assignees of the Estate and Effects of any Prisoner discharged by virtue of this Act, or the Heirs, Executors or Administrators of any deceased Assignee or Assignees, shall not deliver over any Part of such Estate or Effects, or pay the Balance of the Produce of any such Estate or Effects found to be in the Hands of such deceased Assignee or Assignees, or of such Heirs, Executors or Administrators as aforesaid, according to the Order of the said Court, it shall be lawful for the said Court, by Warrant under the Hand and Seal of the said Commissioner, directed to the proper Officer of the said Court to be appointed for that Purpose, to order the Person or Persons disobeying such Order to be arrested, and committed to the next County Gaol, there to remain, without Bail or Mainprize, until such Person or Persons shall have obeyed such Order, and paid all such Costs as the said Court shall award to be paid in respect thereof, or until such Court shall make other Order to the contrary.

Assignees, &c.
not paying over
Balance of
Estate in their
Hands proceed-
ed against.

Imprison-
ment.

XLVII. And whereas Persons are often committed by the Courts of Law and Equity for Contempts in not paying Money ordered or awarded to be paid, and also for not paying of Costs duly and regularly taxed and allowed by the proper Officer, after proper Demands made for that Purpose, and also upon the Writ *De Excommunicato capiendo*, or other Process, for or grounded on the Non-payment of Money, Costs or Expences, in some Cause or Proceeding in some Ecclesiastical Court, or for Contempt of such Court by Non-payment of Money, Costs or Expences; Be it further enacted, That all such Persons so committed shall be entitled to the Benefit of this Act, on and subject to the same Terms, Conditions and Restrictions, as are herein expressed and declared with respect to Prisoners for Debt only.

Committed for
Contempt of
Courts, in not
paying Costs,
&c. entitled to
Benefit of Act.

XLVIII. And be it further enacted, That in all cases wherein by this Act an Oath is required, the solemn Affirmation of any Person being a Quaker shall and may be accepted and taken in lieu thereof; and every Person making such Affirmation, who shall be convicted of wilful false Affirmation, shall incur and suffer such and the same Penalties as are inflicted and imposed upon Persons convicted of wilful and corrupt Perjury.

Affirmation
of Quaker
taken.

Perjury.

XLIX. And whereas Persons claiming the Benefit of this Act may be liable to be deprived of such Benefit on account of mere Matters of Form, or Errors or Omissions in their Petitions, Schedules or other Proceedings directed by this Act; Be it further enacted, That it shall and may be lawful to and

Proceedings
in Court may
be amended.

No. 42.
53 George III.
c. 102.

Persons taking
Benefit of Insol-
vent Act within
five Years, not
entitled to Re-
lief

Crown Debt-
ors, or Persons
committed for
Offences against
Revenue not
entitled to Be-
nefit of Act.

Prisoner dis-
charged not en-
titled to Benefit
within five
Years, unless
Debts be neces-
sarily incurred,
&c.

for the Court to be established by virtue of this Act, to amend Matters of Form, and to supply Omissions, or to correct Errors in the Petition, Schedule or other Proceedings directed by this Act, in case the same shall appear to the said Court to have arisen from Ignorance, Mistake or Inadvertency, and not to have been wilful and fraudulent; any thing hereinbefore contained to the contrary notwithstanding.

L. Provided always, and be it further enacted, That no Person who shall have taken the Benefit of any Act heretofore passed for the Relief of Insolvent Debtors shall have the Benefit of this Act, or be deemed to be within the Intent and Meaning thereof, so as to be discharged under the same, until the Expiration of the Term of five Years from the time of such former Discharge; any thing hereinbefore contained to the contrary thereof notwithstanding; unless from special Circumstances the said Court should be of Opinion that it would be just and reasonable that such Prisoner should be again discharged by virtue of this Act.

LI. Provided always, and be it further enacted, That this Act shall not extend, or be construed to extend, to discharge any Prisoner seeking the Benefit of this Act, with respect to any Debt or Penalty with which he or she shall stand charged at the Suit of the Crown, or of any Person for any Offence committed against any Act or Acts of Parliament relative to his Majesty's Revenues of Customs, Excise, Stamp or Salt Duties, or any of them, or any Branches of the said Public Revenue, or at the Suit of any Sheriff or other Public Officer, upon any Bail Bond entered into for the Appearance of any Person prosecuted for any Offence committed against any Act or Acts of Parliament relative to his Majesty's said Revenues of Customs, Excise, Stamps or Salt Duties, or any other Branches of Public Revenue, unless three of the Lords Commissioners of his Majesty's Treasury for the time being shall certify under their Hands their Consent to the Discharge of such Prisoner, upon the Terms and Conditions prescribed by the Act.

LII. Provided always, and be it further enacted, That no Person who shall have been at any Time discharged by virtue of this Act shall again be entitled to the Benefit thereof within the Space of five Years after such Discharge, unless Three fourths in Number and Value of the Creditors against whom such Person shall seek to be discharged by virtue of this Act shall signify his, her or their Assent to such Discharge, or it shall be made appear to the Satisfaction of the Court to be established by virtue of this Act, that such Person has since his or her former Discharge endeavoured by Industry and Frugality to pay all just Demands upon him or her, and has incurred no unnecessary Expence, and that the Debts which such Person has incurred, subsequent to such former Discharge, have been necessarily incurred for the Maintenance of such Person or his or her Family, or that the Insolvency of such Person has arisen from Misfortune, or from Inability to acquire Sub-

Debts incurred prior to such former Discharge, to which such Discharge did not extend, or from Debts incurred subsequent to such Discharge in consequence of Engagements entered into or Acts done prior to such Discharge.

No. 42.
George III.
c. 102.

LIII. Provided always, and be it further enacted, That no Person, not being a natural born subject of this Realm, shall have the Benefit of this Act, except under such Circumstances, and on such Terms and Conditions, as to the said Court to be established by virtue of this Act shall seem fit and reasonable; any thing in this Act contained to the contrary notwithstanding.

Foreigners.

LIV. Provided always, and be it further enacted, That if any Objection shall be made to the Discharge of any Prisoner on the Ground of any Misconduct of such Prisoner, and it shall appear to the said Court that such Prisoner might not have been aware of such Objection so as to be able to answer the same, such Court shall allow such Prisoner sufficient time to answer such Objection; and shall also, if necessary, require such Objection to be stated in Writing to such Prisoner, so that such Prisoner may be fully apprized thereof.

Time allowed
to answer Ob-
jection to Dis-
charge of Pri-
soner.

LV. Provided also, and be it further enacted, That in case it shall appear to the Satisfaction of the said Court, that any Misconduct which shall be attributed to any Prisoner to prevent his or her Discharge, although strictly within the Intent and Meaning of this Act, was nevertheless attended with such Circumstances, or the Injury thereby done was to so small an Amount, that it may not be fit that such Prisoner should on that Account be deprived of the Benefit of this Act, it shall be lawful for the said Court to discharge such Prisoner, notwithstanding any Objection founded on such Misconduct, either in the same Manner as if such Objection had not been made, or on such further Terms and Conditions as to the said Court shall appear reasonable, in consequence of such Misconduct: Provided also, that in case it shall appear to the Satisfaction of the said Court, that any Debt contracted by any Prisoner seeking to be discharged by virtue of this Act, was contracted under any fraudulent Circumstances not specially provided for by this Act, it shall be lawful for the said Court to except such Debt from the Discharge to be granted to such Prisoner, either absolutely, or upon such Terms and Conditions as to the said Court shall appear to be proper; and if such Prisoner shall be in actual Custody for such Debt, it shall be lawful for the said Court to remand such Prisoner according to the Determination of the said Court upon such Debt.

Court empow-
ered to discharge
notwithstand-
ing Objection
on Ground of
Misconduct.

Debt contract-
ed fraudulently
not discharged.

LVI. And be it further enacted, That if any Person who shall at any Time be a Prisoner in any such Prison as aforesaid, upon any such Process as aforesaid, shall be or become of unsound Mind, and therefore incapable of taking the Benefit of this Act in such Manner as he or she might have done if of sound Mind, the Gaoler or Keeper of such Prison shall forthwith require one or more Justice or Justices of the Peace

Prisoners of
unsound Mind.

No. 42. for the County, Riding, Division or Place wherein such Prisoner shall be, to attend at the said Prison, and enquire into the State of Mind of such Prisoner; and thereupon, and also in case any such Justice or Justices shall receive Information by other Means that any such Prisoner is of unsound Mind as aforesaid, such Justice or Justices shall go to the said Prison, and by his, her or their own View, and by Examination on Oath of such Person or Persons as he or they shall think fit to examine, shall enquire into the State of Mind of such Prisoner; and if it shall appear to such Justice or Justices upon such Enquiry, that such Prisoner is of unsound Mind, and therefore incapable of taking the Benefit of this Act in such Manner as a Person of sound Mind might do, such Justice or Justices shall forthwith make a Record of the Fact, and certify the same to the Court to be established by virtue of this Act; and thereupon it shall be lawful for such Court, at the Instance of any Person or Persons on Behalf such Prisoner, to order Notice to be inserted in the *London Gazette*, and in two or more public Newspapers usually circulated in the Neighbourhood of such Prison, and in the Neighbourhood of the usual Residence of such Prisoner before he or she was committed to such Prison, as the said Court shall see fit, and shall in such Order specify and direct that Application will be made to such Court for the Discharge of such Prisoner, on a Day to be specified in such Order, being Twenty Days at the least from the Day of Publication of such one of such Gazette and Newspapers, containing such Notice as shall be last published; which Notice, together with Service of the like Notice on the Creditor or Creditors at whose Suit such Prisoner shall be detained in Custody, or his, her, or their Attorney or Attornies in such Suit, shall be deemed sufficient to authorize the said Court to proceed to the Discharge of such Prisoner, if otherwise entitled to such Discharge, according to the true Intent and Meaning of such Act; and such Court shall proceed accordingly, and shall discharge such Prisoner, in case it shall appear that such Prisoner might have obtained his or her Discharge under this Act, if of sound Mind; and thereupon such Court shall direct a Conveyance and Assignment to be made of the Estate and Effects of such Prisoner, and Engagement for the Payment of his or her Debts, according to the Provisions of this Act, to be executed by the Clerk of the said Court in the Name and on the Behalf of such Prisoner; which Conveyance, Assignment and Engagement shall be made accordingly, unless such Prisoner shall have been found a Person of unsound Mind by Inquisition taken under a Commission in the Nature of a Writ *De Lunatico inquirendo*, in which case such Conveyance, Assignment and Engagement shall be executed by the Committee or Committees of such Lunatic, in such manner as shall be directed by the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal of the United Kingdom, or such Person or Persons as shall be authorized by the Royal Sign Manual

to provide for the Care and Custody of the Persons and Estates of Persons found lunatic by Inquisition, and such Conveyance, Assignment and Engagement so made, shall be sufficient to all Intents and Purposes to vest the Property of such Prisoner in the Person or Persons to whom the same shall be directed by the said Court to be conveyed and assigned, and shall bind such Prisoner, his or her Heirs, Executors and Administrators, as fully and effectually as if such Conveyance, Assignment and Engagement respectively had been duly executed by such Prisoner.

No. 42.
George III.
c. 102.

LVII. And be it further enacted, That it shall be lawful for the Commissioner of the Court to be established by virtue of this Act, to appoint such and so many Officers of such Court for carrying into Execution the Purposes of this Act, as the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal of the United Kingdom, together with the Lord Chief Justices of the King's Bench and Common Pleas, and the Chief Baron of the Exchequer for the Time being, shall from time to time deem to be necessary and expedient for such Purposes; and such Court shall be always open, and shall be ordinarily holden in some convenient Place or Places in the Cities of *London* or *Westminster*, or in the County of *Middlesex*, within the Bills of Mortality.

Commissioner
of Court to
appoint Offi-
cers.

LVIII. And be it further enacted, That one of the Judges of one of the Courts of King's Bench, Common Pleas and Exchequer at *Westminster*, shall be nominated and appointed by such Courts on the first Day of every Term after the passing of this Act, to be a Judge of a Court of Appeal from the Court to be established by virtue of this Act; and such Court of Appeal shall hear and determine all Appeals from any Orders of the Court to be established by virtue of this Act, except such Orders as are herein specially directed to be final and conclusive, and such Court of Appeal shall have full Power to affirm, reverse or alter any such Order, except as aforesaid, as to such Court of Appeal shall seem just and reasonable, with or without Costs; and the Decisions of such Court of Appeal shall in all Cases be final and conclusive.

Court of Ap-
peal.

LIX. And be it further enacted, That this Act shall continue in force until the first Day of *November* in the thousand eight hundred and eighteen, and thence to the End of the then next Session of Parliament, and no longer.

Rate to
be paid for
the use of
the Court.

LX. Provided always, and be it further enacted, That in the Adjudication of the Court to be established by the said Act, but it shall not be necessary for the Court to refer in such Order to be Creditors of such Prisoner, or with such Exceptions as the

In Ad-
dition, Cr-
tors need
specified.

No. 43.

54 George III. c. 23. — An Act to amend an Act of the fifty-third Year of his Majesty's Reign, intituled, "An Act for the Relief of Insolvent Debtors in *England*." — [10th. December 1813.]

No. 43.
54 George III.
c. 23.
53 G. 3. c. 102.

Place for
holding the
Court.

Taking Oath
previous to
Petition re-
pealed.

WHEREAS an Act passed in the fifty-third Year of his Majesty's Reign, intituled, "An Act for the Relief of Insolvent Debtors in *England*," and it is expedient to amend the said Act; be it therefore enacted and declared by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for the Commissioner appointed or to be appointed by virtue of the said Act to hold the Court established by virtue of the said Act, and to exercise his Office as Occasion shall require in any Part of *England*; but nevertheless such Commissioner shall at all Times have an Office in some convenient Place, either in the Cities of *London* or *Westminster*, or in the County of *Middlesex*, within the Bills of Mortality, for the Dispatch of Business.

II. And whereas it is required by the said Act that every Prisoner applying by Petition to the said Court to be discharged by virtue of the said Act shall previously take the Oath required by the said Act, and that such Petition, with the Schedule in the said Act mentioned, and the said Oath, shall be filed as in the said Act mentioned; and it has been found inconvenient that such Oath should be taken previous to such Petition, and the Order thereon; be it therefore further enacted, That so much of the said Act as requires such Oath to be taken before the presenting of such Petition, and to be filed therewith, and that Notice thereof should be given as provided by the said Act, be and the same is hereby repealed from and after the passing of this Act.

III. And be it enacted, That instead thereof, from and after the passing of this Act, such Petition shall contain an Affidavit to take the Oath required by the said Act, in such Form Assign Circumstances of the Case shall require; and that the said Affidavit shall be taken upon or after the Examination of such to the Provider the said Act, and shall thereupon be filed as the said Court in its; and that the Notice required by the said Act which Conveyan the Order made on such Petition shall not made accordingly; Provided always, That in all Cases in a Person of unsoundall have been taken before the passing of mission in the Naturall be of the same Force and Effect as if which case such Conv made, and the said Court shall proceed shall be executed by the he said Court shall think fit. natic, in such manner as s enacted, That in all Cases in which cellor, Lord Keeper or Lord any Prisoner for Discharge under the Seal of the Unigule of such Prisoner, and a Copy Person as shall be authoriz are required by the said Act to

he served on Creditors, or Persons claiming to be Creditors of such Prisoner, it shall be lawful for the Court established by 54 No. 43.
George III.
c. 23.
virtue of the said Act to dispense with such Service, and to order that Notice of such several Matters may be in the Form or to the Effect expressed in the Schedule to this Act marked (A), or in such other Form or to such other Effect as the said Court shall direct, and that such Notice may be given either by Advertisement in the *London Gazette* or other Newspaper or Newspapers, or in such other Manner as the said Court shall see fit; and it shall be lawful to comprise Notices on Behalf of several Prisoners in the same Advertisement or Instrument, if the said Court shall so order; and it shall be lawful for the said Court either to direct Lists of the Creditors or Persons claiming to be Creditors of each of such Prisoners to be annexed to such Notice, or to direct that such Notice shall refer to the Schedule delivered by each of such Prisoners filed in the proper Office of the said Court; and such Notice so given according to the Order of the said Court shall be deemed sufficient Notice to the Creditors described in such List, or described in such Schedule, as the Case may be, any Thing in the said Act to the contrary notwithstanding; and it shall in like manner be lawful for the said Court to order any other Notice required or authorized by the said Act or by this Act, to be given by Advertisement in any Newspaper or Newspapers, or in any other manner as to the said Court shall seem fit.

V. And be it further enacted, That in case of Defect in the Form or Manner of Service of any Notice required or authorized by the said Act, or in the Insertion of such Notice in the *London Gazette*, or in any Newspaper, or in any Mode of Notice ordered by the said Court, it shall be lawful for the said Court from Time to Time to adjourn the Hearing of any Petition, and to make such further Order respecting the same, or respecting such Notice, as to the said Court shall appear to be reasonable. Defective Notices to be remedied.

VI. And be it further enacted, That in case any Advertisement to be inserted under the Authority of the said Act, or of this Act, in any Newspaper, shall contain more than fifty Words, there shall be paid for the Insertion thereof at the Rate of Sixpence for every ten Words contained in such Advertisement beyond the Number of fifty Words over and above the Sum of three Shillings mentioned in the said Act, and no more. Rate to be paid for Advertisement.

VII. And be it further enacted, That in the Adjudication of the said Court that any Prisoner is entitled to the Benefit of the said Act and the Order thereon, it shall not be necessary to specify the several Creditors and Persons claiming to be Creditors of such Prisoner, as required by the said Act, but it shall be sufficient, if the said Court think fit, to refer in such Order to the Schedule sworn to by such Prisoner, specifying such Creditors or Persons claiming to be Creditors of such Prisoner, either generally or specially, or with such Exceptions as the In Adjudications, Creditors need not be specified.

No. 43. Circumstances of the Case shall appear to the Court to
54 George III. require.

c. 23.

Court empowered to order Prisoners to be brought before it.

VIII. And be it further declared and enacted, That the said Court shall have full Power, and the same is hereby authorized, by any Order for that Purpose, to require the Sheriff or Sheriffs, Keepers or Gaolers of any Prison, or any other Officer having the Custody of any Prisoner, to bring before such Court, or any Justices of the Peace at any Quarter Session or Adjourned or Special Session of the Peace, or out of Session, as to the said Court shall seem fit, any such Prisoner, for any of the Purposes authorized by the said Act or by this Act; which Order every such Sheriff, Keeper, Gaoler, or other Officer shall obey; and for so doing such Order shall be a sufficient Warrant.

Court may order Prisoners to be examined before Justices in Quarter Sessions.

IX. And be it further enacted, That in case the said Court, instead of ordering any Prisoner to be brought before the said Court for Examination, shall direct such Prisoner to be examined before his Majesty's Justices of the Peace for any County, Riding, Division, or Place, at a General Session of the Peace, or any Adjournment thereof, and it shall appear to the said Court, from the Circumstances of the Case, to be proper to authorize such Justices to certify their Opinion, whether such Prisoner is entitled to be discharged under the Authority of the said Act, it shall be lawful for any Creditor or Creditors of such Prisoner to oppose such Discharge before such Justices, who shall thereupon proceed to determine whether such Prisoner is or is not entitled to the Benefit of the said Act, and shall certify such Determination to the said Court established by virtue of the said Act, and it shall thereupon be lawful for the said Court to proceed to adjudge accordingly, as the said Court might have done in case such Prisoner had been brought before the said Court; and it shall not be lawful for any Creditor or Person claiming to be a Creditor of such Prisoner to oppose the Discharge of such Prisoner before the said Court, unless due Notice shall not have been given to such Creditor, or Person claiming to be a Creditor, according to the Order of the said Court for that Purpose, or unless some Fraud or improper Conduct of such Prisoner, or some Irregularity not in question before the said Justices, shall be made appear to the Satisfaction of the said Court.

Notice to be given of Examination before Justices.

X. And be it further enacted, That the Notice to be given of the Examination of any Prisoner before Justices of the Peace, at their Quarter Session, or any Adjournment thereof, may be given by Advertisement in some public Newspaper, according to the Order of the said Court, for Relief of Insolvent Debtors, in the Form or to the Effect expressed in the Schedule to this Act marked (B), or in such other Form or to such other Effect as the said Court shall direct; and it shall be lawful to include any Number of Prisoners in such Notice if the said Court shall so Order.

Gaolers may be examined

XI. And be it further enacted, That the said Court, and also the Justices of the Peace to whom the Examination of any

Prisoner shall be referred by the said Court, shall respectively have full Power, and they are hereby authorized, by Order of the said Court, or of the said Justices respectively, as the Case shall require, to cause the Keepers or Gaolers, or other Officers of any Prison, or any other Person, to come before such Court or Justices, as the Case shall require, and to examine such Gaolers, Keepers, Officers, or other Persons respectively, on Oath, touching any Matter relating to the Execution of the said Act, and of this Act, as to the said Court and the said Justices respectively shall seem fit; and if any such Gaoler, Keeper, Officer, or other Person, who shall be so examined, shall wilfully swear or perjure himself or herself on such Examination, and shall be lawfully convicted thereof, he or she so offending shall suffer such Punishment as by Law may be inflicted on Persons convicted of wilful and corrupt Perjury.

No. 43.
54 George III.
c. 23.
by the Court or
Quarter Sessions.

XII. And be it further enacted, That all and every Sheriffs, Gaolers, Keepers, or other Officers of any Prison or Prisons, who have done or shall do any Thing in obedience to any Order of the said Court, or of any Justice or Justices of the Peace, authorized by any Order of the said Court by virtue of the said Act or of this Act, shall be and is and are hereby indemnified for and in respect of any Thing so done, and every such Order shall be a sufficient Discharge to such Sheriffs, Gaolers, Keepers, and other Officers respectively, for whatsoever hath been or shall be done by them respectively in obedience thereto, and shall indemnify them respectively against any Escape or Action for Escape, or any Action or Actions whatsoever, which hath been or shall or may be brought against any such Sheriffs, Gaolers, Keepers, or other Officers respectively, for any thing which hath been or shall be so done as aforesaid; and such Sheriffs, Gaolers, Keepers, and other Officers respectively, shall and may plead to any such Action the General Issue, and give the said Act and this Act in Evidence, and on Production of such Order or Orders as aforesaid, a Verdict shall be given for the Defendant or Defendants in any such Action; and on such Verdict, or if the Plaintiff or Plaintiffs in any such Actions shall be nonsuited, or discontinue his, her, or their Action, or if Judgment shall be had for the Defendant or Defendants on Demurrer, the Defendant or Defendants shall have Treble Costs.

Sheriffs and
Gaolers indem-
nified.

XIII. And be it further enacted, That in case no fit Person shall be willing to accept the Office of Assignee of the Estate and Effects of any Prisoner under the said Act, it shall be lawful for the said Court to order such Estate and Effects to be assigned to an Officer of the said Court to be appointed for that Purpose, and to be called *The Provisional Assignee of the Insolvent Debtors in England*, and such Estate and Effects shall be thereby vested in such Provisional Assignee and his Successors, and shall not remain in him if he shall resign or be removed from his Office, or in his Heirs, Executors or Administrators in case of his Death, but shall in every such Case go to and be vested in his Successor in Office; but such Officer shall not be bound to do any Act with respect to such Estate or

Treble Costs.

Provisional
Assignee may
be appointed.

No. 43. Effects, except to convey or assign the same to any Person or
 54 George III. Persons to be appointed by the said Court, Assignee or Assign-
 c. 23. nees thereof for the Purposes of the said Act; but in case no
 Person will accept the Office of Assignee of such Estate and
 Effects, and the same shall therefore remain vested in such
 Provisional Assignee, and it shall appear that there are or may
 be Estate or Effects which may be applicable to Payment of the
 Debts of such Prisoner, it shall be lawful for the said Court to
 make such Order for the Preservation and Care thereof as to
 such Court shall seem necessary, and to appoint a Receiver or
 Receivers of such Estate or Effects, with such Allowances and
 giving such Security for the same as to the said Court shall seem
 fit; and such Receiver or Receivers shall duly account for and
 apply such Estate and Effects under the Order of the said
 Court, and shall sell and dispose of or let and set the same, if
 necessary, as the said Court shall direct, and shall be removed
 as the said Court shall think fit.

A. Recogni-
 zance to be en-
 tered into by
 the Prisoner,
 instead of an
 Engagement as
 under the rec-
 ited Act.

XIV. And be it further enacted, That so much of the said
 Act as requires any such Prisoner to execute an Engagement
 for Payment of the Debts or Demands of the Persons against
 whom such Prisoner shall be adjudged by the said Court to be
 entitled to the Benefit of the said Act, and as directs any Pro-
 ceeding on such Engagement, shall be and the same is hereby
 repealed; and instead thereof the said Court shall require such
 Prisoner to enter into a Recognizance to the King's Majesty for
 the full Amount of such Debts; and it shall be lawful for any
 Creditor or Creditors of such Prisoner, from Time to Time to
 apply to the said Court to have such Recognizances put in Suit
 and the same shall be put in Suit in pursuance of the Order of the
 said Court for that Purpose, if the said Court shall see fit; but all
 Proceedings thereon shall be subject to the Order of the said
 Court, and any Money which shall be recovered upon any such
 Recognizance shall be paid and applied under the Order of the
 said Court, in the same Manner as any Money which might
 have been recovered under such Engagement as aforesaid, and
 the Judgment directed by the said Act to be entered thereupon
 might have been paid or applied under the Authority of the said
 Act; and the said Court shall in all Cases proceed upon such
 Recognizance as the said Court might have done under the
 Authority of the said Act upon the Engagement and Judgment
 thereupon by the said Act required to be executed and entered
 as aforesaid: Provided always, That in case any Proceeding
 shall be had upon the said Recognizance, the Creditor or Cre-
 ditors deriving the same shall be at the Expence of all Pro-
 ceedings thereupon, but shall be at Liberty to retain such
 Expences, and all Expences attending any Application to the
 said Court touching the same, out of any Money to be reco-
 vered thereon, if the said Court shall so direct; and in case
 any Application shall be made to the said Court for Liberty to
 proceed on any such Recognizance, such Court shall order the
 Costs of such Application, or of any Opposition thereto, to
 be paid as the said Court shall seem just

XV And be it further enacted, That in case the said Court shall think fit, it shall be lawful for the said Court to receive Affidavits of the Service of any Notice, or of any formal Proceeding in the Execution of the said Act or of this Act, such Affidavits being sworn either before any Officer of the said Court appointed by the said Court for that Purpose, or before any Master Extraordinary in Chancery, or any Commissioner for taking Affidavits in the Court of King's Bench, Common Pleas, or Exchequer, which Affidavits such Officer, Master, or Commissioner, is hereby authorized to take; and if any Person, making any such Affidavit before any such Officer, Master, or Commissioner, shall wilfully swear and perjure himself or herself, and shall be lawfully convicted thereof, he or she so offending shall suffer such Punishment as by Law may be inflicted on Persons convicted of wilful and corrupt Perjury

No. 13.
54 George III.
c. 23.

Court may
receive Affidavits of the Service of Notice, or of any Proceeding.

XVI And be it further enacted, That so much of the said Act as provides a Court of Appeal from the Court established by virtue of the said Act, shall be and the same is hereby repealed

No Court of Appeal.

XVII And be it further enacted, That this Act shall continue in force until the first Day of November one thousand eight hundred and eighteen, and thenceforth to the End of the then next Session of Parliament, and no longer.

Continuance of Act.

XVIII Provided always, and be it further enacted, That this Act or any Part thereof may be repealed or altered by any Act or Act to be made in this present Session of Parliament.

Act may be repealed or altered in this Session.

Schedule (A).

Notice to Creditors of hearing Petitions in Court.

‘ BY Order of the Court for Relief of Insolvent Debtors, the Petition [or, Petitions] of A B. late of
and now a Prisoner in
[or, of A B late of, &c C D late of, &c.
&c &c] will be heard on the Day of at

‘ Last of the Creditors of the said A. B.

‘ E F. of

‘ G. H. of

or if such Last shall not be added to such Notice, there may be added

‘ The Names of the Creditors of the said A. B. appear in a
‘ Schedule annexed to his Petition, filed in the Office of the said
‘ Court at to which any Creditor may refer.’

No. 43.
 24 ~~George III.~~
 c. 25.

Schedule (B).

Notice to Creditors of the Examination of a Prisoner before Justices at their Quarter Sessions of the Peace, and that such Justices are authorized by the Court to certify whether the Prisoner is entitled to the Benefit of the said Act.

‘ BY Order of the Court for the Relief of Insolvent Debtors, A. B. late of , and now a Prisoner in
 ‘ [or, A. B. C. D., &c. as the Case may be]
 ‘ will be examined before the Justices of the Peace for
 ‘ , assembled at their Quarter Sessions of the Peace at
 ‘ , on the Day of
 ‘ for the Purpose of determining whether the said A. B., is
 ‘ [or, the said A. B. C. D., &c. are] entitled to the Benefit of
 ‘ the Act for the Relief of Insolvent Debtors; and all Creditors of the said A. B. [or; of the said A. B. C. D., &c. as
 ‘ the Case may be] are required to attend accordingly, if they
 ‘ shall think fit.’

